

LECC

Law Enforcement
Conduct Commission

OPERATION PAMIR

A report under section 132 of *Law Enforcement Conduct Commission Act 2016* concerning the arrest, charging and prosecution of a vulnerable person, including issues arising from his detention in custody

October 2024

LECC

Law Enforcement
Conduct Commission

Level 3, 111 Elizabeth Street
Sydney NSW 2000
Email: contactus@lecc.nsw.gov.au

Postal address

GPO Box 3880
Sydney NSW 2001
Phone: (02) 9321 6700
Toll free: 1800 657 079
Fax: (02) 9321 6799

Copyright: © State of New South Wales through the Law Enforcement Conduct Commission, NSW, Australia, 2000. You may copy, distribute, display, download and otherwise freely deal with this work for any purpose, provided that you attribute the Law Enforcement Conduct Commission as the owner. However, you must obtain permission from the Commission if you wish to (a) charge others for access to the work (other than at cost), (b) include the work in advertising or a product for sale, or (c) modify the work.

Disclaimer: This document has been prepared by the Law Enforcement Conduct Commission for general information purposes. While every care has been taken in relation to its accuracy, no warranty is given or implied. Further, recipients should obtain their own independent advice before making any decision that relies on this information. This report is available on the Commission's website: www.lecc.nsw.gov.au. For alternative formats such as Braille, audiotape, large print or computer disk, contact the Commission by email: media@lecc.nsw.gov.au or phone: (02) 9321 6700, toll free: 1800 657 079 or fax: (02) 9321 6799.

ISBN 978-1-74003-068-7

The Law Enforcement Conduct Commission acknowledges and pays respect to the Traditional Owners and Custodians of the lands on which we work, and recognises their continuing connection to the lands and waters of NSW. We pay our respects to the people, the cultures, and the Elders past and present.



Office of the Chief Commissioner

18 October 2024

The Hon Ben Franklin, MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Report in Operation Pamir

In accordance with s 132(3) of the *Law Enforcement Conduct Commission Act 2016* (the Act), the Commission provides you with a copy of its Report:

Operation Pamir

A report under s 132 of the *Law Enforcement Conduct Commission Act 2016* concerning the arrest, charging and prosecution of a vulnerable person, including issues arising from his detention in custody

Under s 142(2) of the Act, I recommend that this report be made public immediately.

Yours sincerely



The Hon Peter Johnson SC
Chief Commissioner

Executive Summary

On 28 May 2020 MAP1, a 29 year old Aboriginal man, was arrested by officers of the NSW Police Force after the execution of a search warrant at his home. He was charged with a series of larceny and break and enter offences. MAP1 was taken into custody.

In police custody, MAP1 got advice from 2 different solicitors, both of whom advised that he should not be interviewed. He accepted this advice. He still went on to participate in 2 electronically recorded interviews. During the first interview, he asked to stop the interview several times, so that he could speak to a solicitor, but these requests were ignored. In the second interview, he made admissions which turned out to be false.

MAP1 also consented to and participated in a forensic procedure. The interviews and forensic procedure were undertaken by Officers PAM1 and PAM2.

The charges against MAP1 proceeded before Judge Herbert in the NSW District Court. On 1 April 2022 Judge Herbert gave a pre-trial ruling that the admissions made by MAP1 were inadmissible because of the undue pressure being put on MAP1 by the 2 officers. As a result of this ruling, the prosecution was discontinued, and MAP1 was given an order for costs.

Judge Herbert made adverse comments about the conduct of the officers involved in the arrest, interviewing and custody management of MAP1.

The Office of the Director of Public Prosecutions then made a complaint to the Commission about the conduct of the officers involved in the arrest, charging and prosecution of MAP1.

Issues

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

- Whether the officers had improperly obtained admissions from MAP1 during his time in custody?
- Whether the custody manager failed in his duties towards MAP1 whilst he was in custody?
- What procedures are in place within the NSW Police Force for reporting failed prosecutions in the District Court?

The evidence

The Commission used the transcripts of evidence and judgment of Judge Herbert as well as NSW Police Force documents about MAP1's arrest and charging. The Commission took evidence from the 2 officers involved in the arrest and charging, as well as the custody manager, Officer PAM3.

Findings

The Commission has made findings of serious misconduct about Officer PAM1, Officer PAM2 and Officer PAM3. The Commission recommends that the Commissioner of Police consider taking reviewable action against each of the officers under s 173 of the *Police Act 1990*.

Recommendations

The Commission also makes the following recommendations:

- 1) Training should be provided to all investigating officers and custody managers relating to the right to silence of a person in custody and the implications and consequences of not affording that right. The training should focus on identifying when a person in custody exercises that right and the need to immediately cease any interview or questioning once that right is exercised.
- 2) Training should be provided to all investigating officers and custody managers concerning the distinction between legal advice provided by a legal practitioner and instructions given by a person in custody to their legal representative with it being open to a legal representative to convey those instructions to a police officer on behalf of a person in custody. This training should also clarify that it is the instructions given by a person in custody that should be recorded in the custody management records, and stress the importance of respecting those instructions. Custody managers should be trained to be more conscious of situations (and the duty of custody managers) where a person in custody has given instructions not to participate in an interview, and yet investigating officers are attempting to interview the person in custody whether formally or informally. It should be made clear that it is sufficient if the instructions are conveyed to the custody manager by the legal representative. If a police officer wishes to confirm those instructions with the person in custody, the enquiring officer should ask 'I understand from your legal representative that you do not wish to participate in a

record of interview. Is that the case?' If the person in custody confirms that is the position, no further questioning should take place.

- 3) The Commissioner of Police should give consideration to the taking of reviewable action with respect to Officers PAM1, PAM2 and PAM3 under s 173 of the *Police Act 1990*.
- 4) If it has not already occurred, the Commissioner of Police should enter into a Protocol with the Commonwealth Director of Public Prosecutions to achieve the same purpose as the 'Protocol for the Notification of Judicial Criticism of NSW Police Officers' as entered into in 2024 with the NSW Director of Public Prosecutions.

Table of Contents

Executive Summary	1
1. Introduction	5
2. The Commission’s Statutory Functions.....	8
3. The Commission’s Investigation	9
4. Operation Mantus	48
5. Submissions received	55
6. Affected Persons	59
7. Recommendations	65
8. Conclusion	66
Appendix 1 - The Commission’s Statutory Functions	68
Appendix 2 – Extracts from other relevant legislation.....	76
Appendix 3 – ‘Protocol for the Notification of Judicial Criticism of NSW Police Officers’ between the Commissioner of Police and the NSW Director of Public Prosecutions (April 2024).....	93

1. Introduction

Background

- 1.1. In February 2020 a number of vehicles were stolen from homes in the Concord, Strathfield, Cabarita, Mortlake, Kings Cross and Manly areas, where the offenders would break into the homes to steal the keys to the motor vehicles and then drive off with the stolen motor vehicles.
- 1.2. Officer PAM1, Officer PAM2 (both holding the rank of Constable at the time) and another officer commenced an investigation shortly after these incidents were reported. These officers attended the relevant areas and spoke to the victims as well as obtaining CCTV footage where available.
- 1.3. Upon reviewing the CCTV footage, Officer PAM1 identified 3 persons gaining entry into various properties for the purpose of stealing motor vehicles. All 3 had their faces covered and thus were not able to be identified. However Officer PAM1 was able to identify that they utilised a Mazda SUV to drive to and from the various properties.
- 1.4. One of the vehicles stolen from Manly was captured by a toll booth camera travelling across the Sydney Harbour Bridge on 10 February 2020 at 3:58 am. Further investigation revealed that a Mazda SUV registered to MAP2 (partner of MAP1) was involved in a similar offence in the Kings Cross area, and that this vehicle also travelled across the Sydney Harbour Bridge on 10 February 2020 about 7 minutes after the stolen vehicle from Manly, being 4:05 am.
- 1.5. This led to police identifying MAP1 as a suspect, as he had previously been recorded driving MAP2's vehicle and he also has prior convictions for aggravated break, enter and steal offences where vehicles had been stolen.
- 1.6. Further, in one of the offences that occurred in Strathfield, one of the offenders could be seen wearing Air Jordan branded tracksuit pants, black and white Nike runners, and a grey hooded jumper while carrying a screwdriver with a yellow handle. During the course of this Strathfield incident, a pair of yellow Adidas Yeezy shoes in size 10.5 was also stolen. All these items were located at the home of MAP1 during the execution of a search warrant on 28 May 2020.
- 1.7. MAP1 was subsequently placed under arrest and taken to a nearby police station.

- 1.8. Officer PAM3, holding the rank of Acting Sergeant at the time, was the custody manager on duty and he informed MAP1 of his rights under the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA). The Aboriginal Legal Service (ALS) was contacted and MAP1 was able to speak to a solicitor, Georgie Melrose, from that service.
- 1.9. Ms Melrose advised MAP1 of his right to refuse to participate in an interview and a forensic procedure. MAP1 gave instructions stating that he would not participate in the interview, but he wanted to participate in the forensic procedure. Ms Melrose relayed these instructions to the police and requested that it be recorded in the custody management records. The custody management records show that this was done.
- 1.10. Despite the instructions relayed to the police by Ms Melrose, MAP1 was taken to the interview room by Officers PAM1 and PAM2 for the purpose of an interview, which took place for over an hour. During this interview MAP1 made partial admissions about his involvement in the offences.
- 1.11. After the interview finished, MAP1 participated in a forensic procedure, which he had consented to earlier. MAP1 was taken back to the custody area where he subsequently spoke with solicitor Negin Fard of NFK Lawyers on the telephone. Ms Fard had been contacted by MAP2 to act for MAP1.
- 1.12. Ms Fard advised MAP1 not to participate in an interview. MAP1 asked if she could relay that to the police. Ms Fard then spoke to Officer PAM2 and advised him that MAP1's instructions were that he did not wish to participate in an interview. Despite this, Officers PAM1 and PAM2 took MAP1 back to the interview room for a second interview which lasted for over an hour. MAP1 made full admissions during the interview, including admissions to offences which he could not have been involved in.
- 1.13. MAP1 was subsequently charged with the following offences:
- (i) Aggravated enter dwelling-house with intent to commit a serious indictable offence (subsequently withdrawn at Local Court)
 - (ii) Aggravated enter dwelling-house with intent to commit a serious indictable offence (committed for trial)

- (iii) Larceny
- (iv) Aggravated break and enter in company (subsequently withdrawn at Local Court)
- (v) Enter vehicle without consent (subsequently withdrawn at Local Court)
- (vi) Enter vehicle without consent (subsequently withdrawn at Local Court)
- (vii) Attempted aggravated break and enter in company (subsequently withdrawn at Local Court)
- (viii) Attempted aggravated break and enter in company (subsequently withdrawn at Local Court)
- (ix) Aggravated break and enter in company (committed for trial)
- (x) Aggravated break and enter to commit serious indictable offence (subsequently withdrawn at Local Court)
- (xi) Steal motor vehicle
- (xii) Steal motor vehicle
- (xiii) Possess prohibited drug (pleaded guilty in Local Court)
- (xiv) Larceny
- (xv) Larceny
- (xvi) Aggravated break and enter in company
- (xvii) Aggravated break and enter in company
- (xviii) Aggravated break and enter in company
- (xix) Aggravated break and enter to commit serious indictable offence
- (xx) Attempted aggravated break and enter in company
- (xxi) Attempted aggravated break and enter in company, and

(xxii) Attempted aggravated break and enter in company.

- 1.14. Eleven of the above charges proceeded on indictment in the NSW District Court, including 3 larceny charges, 3 charges of attempted aggravated break and enter with intent to steal, 3 charges of aggravated break, enter and steal, and 2 charges of steal motor vehicle. The remaining charges were withdrawn by the prosecution, with the exception of the charge of possess prohibited drug to which MAP1 pleaded guilty in the Local Court and was sentenced to a conditional release order for a period of 9 months without conviction.
- 1.15. The 11 charges that proceeded in the NSW District Court came before Judge Herbert. The legal representatives for MAP1 sought to have the 2 interviews excluded pursuant to certain provisions of the *Evidence Act 1995*. In the pre-trial ruling of 1 April 2022, Judge Herbert ruled that both interviews were inadmissible as the admissions made in the interviews had been obtained improperly and illegally. As a result of the exclusion of these interviews, all charges were withdrawn and an order for costs was made on 19 October 2022.
- 1.16. On 5 December 2022, the Acting Deputy Director for Public Prosecutions wrote to the Commission attaching Judge Herbert's ruling and relevant transcripts, expressing concerns that there were reasonable grounds to suspect that the conduct of Officers PAM1 and PAM2 constituted serious maladministration.
- 1.17. The Commission subsequently decided to investigate the allegations raised in the complaint.

2. The Commission's Statutory Functions

- 2.1. The relevant provisions of the *Law Enforcement Conduct Commission Act 2016* (NSW) (LECC Act) are set out in Appendix 1 to this Report.
- 2.2. The Commission does not sit as a criminal or civil court. It does not determine the rights of any person. However, the Commission may make findings which are adverse to persons and their reputation. The standard of proof to be applied by the Commission in making findings of fact is the civil standard of proof, proof on the balance of probabilities, being qualified having regard to the gravity of the

questions to be determined. The test is whether the facts have been proved to the reasonable satisfaction of the Commission.¹

- 2.3. An important function for the Commission is to determine whether any police officer has engaged in 'serious misconduct' as defined in s 10 LECC Act. In addition, the Commission may make findings, express opinions or make recommendations under s 133 LECC Act.

3. The Commission's Investigation

- 3.1. As a result of the complaint made by the Acting Deputy Director for Public Prosecutions, the Commission decided to commence an investigation into the conduct of Officers PAM1 and PAM2 to determine if they engaged in serious misconduct or maladministration relating to the prosecution of MAP1. In conducting its investigation the Commission utilised various investigative techniques, including the use of private examinations, the details of which are set out below.

Use of pseudonyms in the Report

- 3.2. The Commission has determined that pseudonyms be used in this Report for persons who were involved in the alleged offences and those who have given evidence at private examinations (unless varied by further order of the Commission). The real names will be used for the legal practitioners and the District Court Judge involved. In adopting this approach, the Commission had regard to the Guidelines on the use of pseudonyms and non-publication orders in Commission reports published by the Commission in November 2023, and submissions received from the legal representatives acting on behalf of Officers PAM1, PAM2 and PAM3. Amongst other considerations, the Commission had regard to the fact that the District Court ruling excluding the interviews had not been published on Caselaw.

¹ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362; [1938] HCA 34; *Rejtek v McElroy* (1965) 112 CLR 517 at 521; [1965] HCA 46; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171-172; [1992] HCA 66.

Private examinations

- 3.3. Officer PAM1 gave evidence at a private examination on 6 December 2023. He stated that he joined the NSW Police Force in December 2015 and held the rank of Constable in May 2020 where he was based in a proactive crime team at an inner west police station.²
- 3.4. Officer PAM2 also gave evidence on 6 December 2023 at a private examination. He joined the NSW Police Force in August 2018 and was a Constable in May 2020 where he was based at an inner west police station.³ Officer PAM2 was the officer second-in-charge in relation to the investigation of MAP1, along with another officer.⁴
- 3.5. Officer PAM3 gave evidence at a private examination on 7 December 2023. He joined the NSW Police Force in May 2008 and held the rank of Senior Constable in May 2020. His role was that of a custody manager on the day that MAP1 was taken to the police station.
- 3.6. All officers were legally represented at their respective private examinations.

The police investigation

- 3.7. Officer PAM1 stated in evidence that CCTV footage related to an offence in Kings Cross showed a Mazda SUV driving without its headlights on and the registration was visible from the footage. He formed the view that what occurred in Kings Cross had the same modus operandi as the other offences that occurred in the Concord, Strathfield, Cabarita, Mortlake and Manly areas, and accordingly looked into the registered owner of that vehicle, who turned out to be MAP2.⁵
- 3.8. Based on this information, Officer PAM1 was able to identify that MAP1 was connected to the vehicle due to a previous charge or ticket. Officer PAM1 further identified that MAP1 had recorded on his criminal history an offence of aggravated break and enter where he had stolen a vehicle.⁶

² Private examination QWS at T6.

³ Private examination HTL at T5.

⁴ Private examination HTL at T7.

⁵ Private examination QWS at T8-9.

⁶ Private examination QWS at T9.

- 3.9. Officer PAM1 conducted some tolling inquiries and discovered that at around 4 am on 10 February 2020, this Mazda vehicle had travelled across the Harbour Bridge about 7 to 10 minutes after one of the stolen vehicles had also crossed the bridge.⁷
- 3.10. Additionally, Officer PAM1 pointed to other information which led him to suspect MAP1 was involved in these offences.⁸
- 3.11. Based on the above, Officer PAM1 had formed the view that MAP1 was involved in the offences.

Search warrant and arrest

- 3.12. On the morning of 28 May 2020, police executed a search warrant at the residence of MAP1 and his partner MAP2. Both their children were present at the time which caused an amount of emotional distress.
- 3.13. Shortly after the search commenced, MAP1 identified himself as being Aboriginal and admitted to being in possession of marijuana for personal use.
- 3.14. During the search, police located various items including a yellow pair of Adidas Yeezy shoes, Air Jordan brand tracksuit pants, a pair of black and white Nike runners, a grey hooded jumper and a screwdriver with a yellow handle. Due to the location and seizure of these items, MAP1 was placed under arrest and taken to a nearby police station.

MAP1 in custody

- 3.15. Custody management records show that MAP1 arrived at the police station at 12:45 pm.⁹
- 3.16. Officer PAM3 was the custody manager at the time. As part of his duties, he was required to maintain and update the custody management records. In the private examination he described his level of experience as a custody manager in May 2020 as 'beginner to intermediate'.¹⁰

⁷ Private examination QWS at T9-10.

⁸ Private examination QWS at T10-11.

⁹ Exhibit BVT3C.

¹⁰ Private examination BVT at T7.

3.17. MAP1 was offered a support person by Officer PAM3.¹¹ Custody management records show this occurred at 12:58 pm and the offer was declined.¹²

3.18. Officer PAM3 also contacted ALS and spoke to solicitor Georgie Melrose at 1:20 pm.¹³ He transferred the call to MAP1 and understood that Ms Melrose had advised MAP1 not to participate in an interview but he would consent to the forensic procedure.¹⁴ However he denied that he could hear what MAP1 was saying on the telephone because he was not paying attention.¹⁵

3.19. Officer PAM3 noted the following in the custody management records:

Spoke to Georgie Melrose from ALS – Informed no interview or interview room but will do forensic procedure.

3.20. Officer PAM3 claims that he relayed this message to Officers PAM1 and PAM2:¹⁶

Q: And you're aware that those two officers conducted an interview with MAP1 after this?

A: Yes.

Q: Did you ever inform either of those officers of your conversation with Ms Melrose?

A: Yeah. I would have informed them.

Q: Did you tell one or both of them?

A: I can't remember. The procedure is normally after ALS they will come in and I will advise them, and then – of what ALS said. They always come in and ask, and you always tell the investigating officers.

Q: But I'm asking about this specific occasion. Do you recall what you told them?

A: I would have told them basically that ALS have advised – their advice was no interview and a forensic procedure.

Q: Do you recall what their response was?

A: No.

3.21. MAP1 was taken to the interview room by Officers PAM1 and PAM2 soon after the telephone call with Ms Melrose, but Officer PAM3 claims that he may have

¹¹ Private examination BVT at T8.

¹² Exhibit BVT3C.

¹³ Exhibit BVT3C.

¹⁴ Private examination BVT at T9-10.

¹⁵ Private examination BVT at T10.

¹⁶ Private examination BVT at T12.

been in the bathroom at the time and was temporarily replaced by another officer.¹⁷ Custody management records support this as it shows that another officer had recorded MAP1's movement to the interview room at 1:55 pm in the custody management records.¹⁸

3.22. Officer PAM3 was questioned in the private examination as to why he did not raise an issue when he realised MAP1 was being interviewed despite having spoken to Ms Melrose about MAP1 not being interviewed:¹⁹

Q: Did it strike you as odd that Ms Melrose had told you that MAP1 was not to be interviewed or taken to the interview room and yet he was in the interview room at that time?

A: No.

Q: Why not?

A: Because it was advice. It's up to him if he decides to go in for the interview or not.

Q: Why do you say that it was advice? Go back to the Melrose entry, please, on page 4. It says – well, firstly, you speak to her and you no doubt tell her you have a man called [MAP1] in custody, et cetera. Then the phone is handed to him, and Melrose speaks to [MAP1]. And then the phone is handed back to you, and that's the point at which you make this entry, after that conversation; is that right?

A: That's correct, Chief Commissioner. They always ask for us to put a comment in with what their advice is to the client is.

Q: Well, it says:

Informed no interview or interview room but will do forensic procedure.

Doesn't that sound like the instructions being given to the lawyer by [MAP1] that he doesn't want to do an interview or go into the interview room, but he will do a forensic procedure; isn't that what that means?

A: To me it means that that's what the advice is from the solicitor.

Q: You understand the difference between a lawyer giving advice to someone and then the person giving instructions to the lawyer, don't you?

A: Yes.

¹⁷ Private examination BVT at T12-13.

¹⁸ Exhibit BVT3C.

¹⁹ Private examination BVT at T14-16 and T31-32.

Q: Isn't the process, by the time you put that in, that the lawyer had given advice to [MAP1] and [MAP1] had apparently given instructions to Melrose that were being passed on to you?

A: From my recollection, it was just advice that she gave him – that's what the solicitor – they'd normally ring up for the solicitors for advice, and that's the advice they – their legal advice is just what I'd recommend. And then –

...

Q: Well, "Informed no interview or interview room but will do forensic procedure" doesn't that, on the ordinary English language, sound like the outcome? That's what [MAP1] will do: No interview or interview room, but he will do a forensic procedure. It's the outcome; it's what he wants to do. It's not advice; it's instructions, isn't it?

A: I don't believe that. Like, he wasn't dragged into the interview room. He's got up and walked in. Like, it was a decision he made. He just gets advice from the solicitor.

Q: That's a different question, officer. I am asking you this: do you approach your function as custody manager – and do you still serve as custody manager now?

A: Yes, sir.

Q: When you write something down like this, do you always treat it as just being advice and not instructions?

A: Yes, from the solicitor. Unless the prisoner tells me, "I don't want to do an interview", then that's an instruction.

Q: That's the instruction to you, but isn't this the lawyer telling you what the person wants to do and doesn't want to do? And that's you, as the custody manager, exercising your important, protective, statutory function for vulnerable people? And I'm loading that all up because you would have a very important function that day – didn't you?

A: Yes.

Q: Did you tell the interviewing officers what Melrose had told you?

A: Yes.

Q: What did you say to them?

A: I would have told them – the procedure is that we ring ALS, and then I speak to them "This is what the ALS advice is" and then, yeah, I basically tell them that there is advice, no interview, no interview room, however he will do a forensic procedure.

Q: I'm wondering if you have misinterpreted what you've been told, because you're saying that's the advice when it's in fact the instructions being given to the lawyer. Do you accept that as a possibility on this day?

A: Well, I – personally no. I believe that was what the advice was. He makes his own decision, ultimately. Like, I wasn't going to stop him from going into –

...

Q: And sitting there even today, you effectively approach what you write down in the custody management record as being nothing more than legal advice, and not the instructions to the lawyer?

A: Yes, correct.

...

Q: But just looking at the words again, I just ask you to concentrate, and they are on this page. You put on the custody management record, "Informed no interview or interview room but will do a forensic procedure." The bit "will do a forensic procedure" is what [MAP1] was prepared to do, wasn't it? That wasn't just advice; that was what he was prepared to do, wasn't it? Looking at your notes?

A: Yeah. Look, I honestly can't remember exactly. I'm going off the custody management record. But normally during – if the ALS says no interview, like, it's – so we write that in. Sorry.

Q: But I'm asking you – you have the advantage of a note that you made in the custody management record within seconds of talking to Ms Melrose; that's right, isn't it?

A: Yes.

Q: Do you accept that the only reasonable reading of what you wrote down was [MAP1's] instructions and not just the advice from a lawyer?

A: I see it as that's what the lawyer told me. She told me to do no interview or go into the interview room, but he will do the forensic procedure.

...

Q: So you still accept that what you wrote down was merely advice and not instructions?

A: That's what I believe, yes.

Q: That's what you believe to this day, sitting there now?

A: Yes.

3.23. Officer PAM3 was also questioned on his interpretation of a 'vulnerable person':²⁰

Q: And in this case [MAP1] was categorized under LEPR as a vulnerable person, correct?

A: That's correct, yeah.

²⁰ Private examination BVT at T20-21.

- Q: And after a vulnerable person has a conversation with their solicitor and you understand that, at the very minimum, the advice that they have received is that they are not to be taken to an interview room and not to participate in an interview, when you see them subsequently being taken to an interview, as a custody manager shouldn't you, at the very least, ask them if that's what they really want to do?
- A: Not in this case. Like, I wasn't there when he got taken into the interview room. But, like, he's – I've read his Part 9. He's spoken to a solicitor. He's also, I think from memory, been in custody a number of times before. I think he knew what was going on. He didn't have any mental health – from talking to him, he didn't have any intellectual disability. He didn't identify an intellectual disability.
- Q: Even putting aside the fact that you weren't there when he was taken away, when you subsequently found out that he was in the interview room at about 3.20pm shouldn't that have raised some concerns for you?
- A: No. I just decided he would have gone into the interview room. It was a decision he made.
- Q: And again he's a vulnerable person and he's received legal advice and what's happened now appears to be contrary to the legal advice correct?
- A: That's correct, that he was given.
- Q: And that didn't cause you any concern?
- A: No. It happens a fair bit.
- Q: Did it ever occur to you that you should call Ms Melrose back and tell her what happened?
- A: No.
- Q: Why not?
- A: She'd already given the advice to him. He knew what the advice was. However he decided to go into the interview room anyway.
- Q: But part of your role as a custody manager is to assist a vulnerable person to exercise their rights; correct?
- A: That's right, yes.
- Q: And if they'd received legal advice and they appeared to be not accepting that, don't you think it would be fair to contact the solicitor to at least tell them that?
- A: No. I think he's made a decision up. I've contacted him so he can talk to a solicitor. Like I said, he didn't have an intellectual disability and he wasn't not a child [sic]. I think he made a decision. I didn't want to take his decision away from him.
- Q: You mentioned again that he doesn't have an intellectual disability and he's not a child, but he's still classified as a vulnerable person; correct?

A: Yes.

Q: What does “vulnerable” mean to you?

A: Just like – there’s a lot of definitions to it. People who can’t speak English, there’s people at risk of self-harm, there’s people with mental health issues. There’s people who, like I said, have low IQ. There’s multiple reasons for vulnerability.

3.24. Officer PAM3 was not sure whether, as the custody manager, he had an obligation to communicate an accused person’s instructions to investigating police but stated that this was his practice:²¹

Q: Is it still your view today that it’s not an obligation for you?

A: I’m not sure. It must be, but like I said, I always do it. It’s something that I 100 per cent always do. I always tell them what the solicitor says.

Q: You’re not sure if it’s an obligation; is that correct?

A: No, no. I believe – yeah.

Q: Does that mean it’s optional for you?

A: Well, it’s not something – it’s not really optional because I just do it all the time. It’s something that you do all the time; you inform the investigators what the legal advice was. It’s not that it’s optional. I always do it. I just don’t know if it’s an obligation.

First interview in custody

3.25. Officer PAM1 could not recall having a conversation with MAP1 about the legal advice he received from the ALS.²² He also could not recall whether he spoke to Officer PAM3, who was the custody manager at the time, about the issue.²³ However, at some point in time, Officer PAM1 asked MAP1 whether he wanted to participate in an interview or not.²⁴ Officer PAM2 stated that he was told by Officer PAM1 that MAP1 had spoken to ALS.²⁵

3.26. Officer PAM1 was shown CCTV footage covering the custody area and the interview room. He agreed that the first interview with MAP1 commenced at around 1:55 pm.²⁶ During this interview, it was incorrectly put to MAP1 that the

²¹ Private examination BVT at T33-34.

²² Private examination QWS at T22 and T25-26.

²³ Private examination QWS at T26.

²⁴ Private examination QWS at T25.

²⁵ Private examination HTL at T14 and T31.

²⁶ Private examination QWS at T28.

Mazda vehicle crossed the Harbour Bridge driving 'in convoy with' the stolen cars:²⁷

Q: Your missus' car, um, is captured on toll booth cameras.
A: Uh-huh.

Q: Driving with that stolen car across the Harbour Bridge. Um, can you tell me any reason why that would be the case?
A: Um, nuh, not really. Sometimes I let me mates borrow me car. I don't know. Sometimes they take my car or ask if they can borrow it. So, I don't even know if I was in the car that night.

...

Q: Huh, so you've got in the car, your – your partner's car.
A: Uh-huh.

Q: That was seen in convoy with the stolen vehicles.
A: Yep.

...

Q: The same night the car driving in convoy with the vehicles.
A: Yeah.

3.27. During the private examination, Officer PAM1 conceded that these were inaccuracies put to MAP1, but denied that he intended to present a stronger case than it was:²⁸

Q: Were you trying to give [MAP1] the impression that your case against him was stronger than it was?
A: No. No, I didn't advert – I didn't intentionally make it out like that. I think it was just a poor choice of words or an easy way of framing what was in my mind about the cars, the coincidence that they're travelling across the bridge seven minutes apart. And I think I used the word "convoy" in my police statement, and at court, when that came out, I conceded that that's not the definition or that's not the way that a convoy works. I should have articulated that they were further apart but travelling across the bridge within minutes of each other, put it that way.

3.28. MAP1 also indicated multiple times during the interview that he wanted it to stop so he could obtain legal advice, but Officers PAM1 and PAM2 continued with the questioning:²⁹

²⁷ Exhibit QWS4C at T12 and T18-19.

²⁸ Private examination QWS at T55-56.

²⁹ Exhibit QWS4C at T4, T22, T27 and T33.

Q: All right. Um, do you want to tell me about what's been going on over the last few months?

A: Um, not really, I, I just don't know what youse have yet and, like, I'm not gonna put my hand up, I just don't want to drag my family through this shit, you know, then...I just want to try and get it over and done with, like, I want to go through the facts and have a look myself and maybe get some legal advice and have a look and, like, get their perspective and whatever, like, nothing can really pin, like, gone and pinched on I'll put me hand up for it.

Q: Ok. Um, do you want us to run through addresses with you or times and dates so that we can start, how about we start at a certain time and we'll work through from there?

A: Nuh, I wouldn't remember times and dates.

...

Q: All right, and so someone, would someone come to your house, all right, I'll put it this way, come to your house, take your clothes, take your partner's car, take your work screwdriver, take your gloves, all right, then drive all over Sydney committing offences and then come back to your house and put your clothes back in your house and then put your glove and your screwdriver back in your car? And that's it, is that what you're saying?

A: Nuh. I don't know. Like, I'm not playing anything, I want to stop this interview now 'cause it's getting a bit too out of control, youse – am I being charged? What are youse – gonna show me the charge?

Q: I'm gonna continue 'cause this is only the first night.

A: Yeah, well –

Q: There's more, yeah.

A: Yeah.

Q: We'll go on, we'll move on.

A: Well...move on without, you know, legal, I want to get their view on what they reckon anyway so –

...

Q: Is that you?

A: Nuh.

Q: No.

A: Huh, no, like I said, I'm willing to put my hand up, huh, I just want to get, um, some perspective just from a lawyer or something, you know, I just want him to have a look at this stuff, huh –

...

Q: I don't really want to give you a bundle and say, this is what we've got and then you can say, yeah, it was me or, and then reflectively on the, on a fact sheet that we wouldn't come through, come

through, you know what I mean? In terms of throwing your hands up at the latest opportunity.

A: Yeah. Yeah, I still want to get a lawyer's opinion, but –

3.29. Officer PAM1 rejected the proposition that he had purposely denied MAP1 the opportunity to speak to his lawyer:³⁰

Q: Would you deny him the opportunity to speak to his lawyer in order to get admissions from him?

A: No. I understand that during the ERISPs, that I've made that fault, I haven't picked up on it, but I definitely would not deny him – I wouldn't do that on purpose, I wouldn't threaten him, I wouldn't deny him his rights on purpose. I know I've made mistakes in this investigation, especially during this custody period, but that is something I just would not do at all.

Q: Are you saying you can deny someone their rights by accident?

A: Not by accident – yeah, by accident, by just not picking up on it, I think. What happened in the interview when – at a certain point he says, “like, I think this is getting a bit too much”, I've read that transcript, I think I just didn't register it as I should have. It wasn't a trigger word for me to just say, “Okay. Stop. All right, let's go and do it”, I think I was part of the way through informing him of the allegations and why he was there, what he wanted to retrieve from us, in terms of “I want to see what you've got”, and I continued to put the allegations to him and I should have stopped and I understand that.

...

Q: So at that stage, he's asked or he's let you know that he would like to obtain some legal advice; correct?

A: Yes, that's correct.

Q: And you've ignored that?

A: Yeah, like I said, I should have picked up on that and – and clarified what he wanted. I think in my mind I was providing him with the allegations, which is what I believed he was there for when he wanted to participate in this first interview, and I hadn't provided him with all of that information, but I should have said – I should have clarified with him, “Do you want me to clearly, probably, even speak to your lawyer for you to let your lawyer know all of the allegations and then she can or he can let you know and you can make an informed decision from there?” But I didn't. I didn't, again.

...

Q: Why didn't you stop the interview there?

³⁰ Private examination QWS at T47-54.

A: Again, at the time, I think I had just so much information in my head and coming – I was working – I was very poorly prepared for this interview. I had a, from memory, I saw it on the CCTV, I had, like, a print-out of an Excel spreadsheet, and I just didn't – it just didn't trigger with me like it would now. I had only provided him – I think in my answer there I'm outlining that I've only provided the allegations for a single night, or up to a certain point, and again, I thought maybe my purpose was to provide him with all of the information, but I know that I've denied him his right there and I should have stopped and let him seek – speak to a lawyer.

Q: Just trying to understand your mindset at the time. You say it didn't trigger with you like it would now, but he has said clearly, "I want to stop this interview now". I mean, what more trigger do you want?

A: Yeah, I – I understand that it should have and I agree it should have, it definitely should have. It just didn't – and it's not – I didn't – I didn't know – I didn't continue to get any admissions out of him. I think I'm making it clear that this is only – "I'm going to continue because this is only the first night", as in, like "I'm going to provide you with what's also happened what's in the brief, what you've asked for, what you've come into the interview room for", and I shouldn't have done that. I think if I was more experienced, I should have said, "Look, it doesn't matter if I haven't given you all the allegations. Let's go back to a lawyer and you can seek advice and I can provide them to them." But I didn't pick up on it the way I should have and it's my fault. I should have picked up on it.

...

Q: He says:

Well...move on without, you know, legal, I want to get their view on what they reckon anyway so –

You say:

All right. And then I go to one, the...umm, you said you wanted to participate in –

A: So he's mentioned there again that he wants legal advice; correct? Yes.

Q: And you've ignored that?

A: Yes.

...

Q: Can we go to page 27, please? Question 229, you say:

No.

And he says:

Huh, no, like I said, I'm willing to put my hand up, huh, I just want to get, umm, some perspective just from a lawyer or something, you know, I just want him to have a look at this stuff, huh –

You say:

Okay.

And then the interview continues. So he's mentioned again there that he wants to seek legal advice; correct?

A: Yes.

Q: And you've ignored it?

A: Yes.

Q: And you've continued on with the interview?

A: Yes.

Q: You've denied him the opportunity to speak to a lawyer?

A: Yes.

Q: Can we go to page 33, please. You see there, just above the middle of the page, he says:

Yeah. Yeah, I still want to get a lawyer's opinion, but –

And you say:

All right. Umm, where's that sheet I was going off? Do you want to say anything?

I think you're asking [Officer PAM2] there. But MAP1 has again brought up the issue of legal advice and you've ignored that, and you've continued on with the interview?

A: Yes.

3.30. Officer PAM2 stated he had been focusing on inconsistencies:³¹

Q: When he said that, did you take to mean he wanted to speak to a lawyer at that stage?

A: At the moment – sorry, in the moment, I was trying to, yeah, listen out for inconsistencies in [MAP1's] version. I wasn't – yeah. I don't recall remembering that specific comment or – yeah, what he said.

...

Q: Now, having seen this, did you understand that [MAP1] wanted to stop the interview?

A: Yes.

Q: And are you able to say why the interview wasn't stopped?

³¹ Private examination HTL at T16-18.

A: No.

Q: Did you have any concerns at this stage when he raised the issue?

A: I wasn't aware of the issue – like, in the moment, I wasn't aware of him raising that.

Q: It's pretty clear, though, isn't it, that he said, "I want to stop this interview"? Shouldn't that have triggered something in your mind at the time?

A: Yeah, again, I was – in the moment, I was listening, thinking about the different break and enters and trying to look out for inconsistencies in his version.

Q: Would you agree with me that if a person who is in [MAP1's] position is being interviewed, that they have a right to stop the interview?

A: Yes.

Q: And if the interview continues, then you're essentially denying the person that right?

A: Yes.

...

Q: Did you understand at that stage that [MAP1] wanted to stop the interview so he could speak to a lawyer?

A: In the moment, no.

Q: Could I ask why not?

A: Again, I was more listening, trying to find things to – yes, catch him out, things that he wasn't saying that added up with, yeah, different versions of CCTV or his moments.

Q: So you're listening to what he is saying to try to catch him out for inconsistencies, but any time that he says he wants to stop the interview or he wants to speak to a lawyer, you've ignored that, correct?

A: I – it hasn't – yeah, I haven't listened to that. If I – obviously looking at it now, I would have – yeah, if I heard what he was saying, I would have stopped the interview.

3.31. During parts of the interview, Officer PAM1 also applied pressure on MAP1 in order to have him make admissions or to provide assistance to the police:³²

Q: We've had three months to come and –

A: ...yeah, I know.

Q: – sort this out now. I know a lot about you, I know you're, I know your mum, your dad, you grew up in Taree, I know you've got kids.

A: Yeah.

³² Exhibit QWS4C at T30-31 and T35-36.

Q: I know your, your missus is [MAP2], I know about her family.
A: Yep. Yep.

...

Q: In the scheme of things I reckon these guys here, from what I know, and from what I've read up, and all that kind of stuff in terms of people's backgrounds and it's not these blokes who are committing the offences with you it's the people, the associates of these blokes who are more, um, I'd be worried about if I was in your position.

A: In terms of what?

Q: Like, the, these guys, um, they themselves, I don't think, have the propensity to carry out what you're thinking they might do, but I'd say their associates definitely would, people that they hang out with, people that they know. Um, I might run through some of the vehicles that have been stolen just to let you have the opportunity to speak about them. If you don't want to speak about them you don't, I'm not gonna give you all this, I'm not gonna continue doing all this.

3.32. Officer PAM1 conceded that this could be perceived as an attempt to put pressure on MAP1 but denied that this was his intention:³³

Q: What was your intention in saying that?

A: I guess to just – to just say that this wasn't just like a small investigation. I wasn't trying to do that as a bravado kind of thing. I think we had previously spoken with him about the last time he was arrested, he brought up strike force, and I was kind – I think I was just comparing – comparing that to him.

I probably should – I shouldn't have said that. I don't think it's necessary to say that. It's not relevant. I did have that knowledge because I had done the risk assessment and the search warrant orders, and obviously we had been investigating him for that period of time. I think just because I was so junior I just thought that, you know, you could maybe say things like that and I just didn't pick up on it that I – I wouldn't say that now, I guess, you know, it's irrelevant. It doesn't really make much of a difference, whether you tell them what the – what your – what your level of knowledge is of them.

Q: You say you didn't think it was necessary or relevant. Would you agree with me that by saying something like that, it has the effect of putting pressure on the person you are interviewing?

A: Oh, that's not my intention, but it could be perceived like that. I would agree that if he – if he thought about it, yeah, that maybe he

³³ Private examination QWS at T58-60.

could – he could receive it as that but the way I was saying it wasn't for that intent.

Q: What was the purpose in saying that you knew – “I know your mum, your dad, you grew up in Taree, you've got kids. I know your missus is [MAP2], I know about her family”? What does that have to do with a record of interview in this investigation?

A: I can't say, your Honour. To be honest with you, I think – I think maybe it might have been stemming from the context of the conversation or maybe – it might have just came to my head at that point in time. Like, I hadn't planned this interview, I hadn't planned it. I was really out of my depth and I think that anything that really was just coming to my head I would just say. I wish I had written down an interview plan, I wish I had formulated questions and really clarified what the purpose of the interview was with him, and even with [Officer PAM2] to say, “what are we trying to achieve here? What's the purpose of doing this?” But I just didn't – didn't register. I just don't think I had – yeah, I just hadn't been in this situation before and I think I was just saying things that I – clearly, I shouldn't have said, from the record of interview.

Q: Would you agree with me that it creates the perception that you're trying to intimidate him?

A: Yes, so it could be perceived by him in that manner but that was not the way I was trying to – that's not what I was trying to do. I was just trying to, I guess, conduct an interview that looked somewhat professional and I'm out of my depth. I've just made so many mistakes in here that I – yeah, I was –

3.33. Officer PAM2 similarly agreed that it could have been perceived as pressure:³⁴

Q: Did it give you the impression that some pressure was being applied to [MAP1]?

A: At the – during the moment – like the time, sorry, I – I wasn't – yeah, I wasn't aware that –

Q: What about now?

A: Now, yes, reading it.

Q: Would you agree with me that it gives off the impression that there is some sort of intimidation attempt to try to get [MAP1] to make admissions?

A: It could be perceived as that, definitely.

3.34. However, Officer PAM2 denied that any pressure was applied to MAP1 that day by any police officers.³⁵

3.35. The totality of the circumstances was later put to Officer PAM1:³⁶

³⁴ Private examination HTL at T20-21.

³⁵ Private examination HTL at T36.

³⁶ Private examination QWS at T61-62.

- Q: Given all that, do you agree that what you've effectively done is put a lot of pressure on [MAP1] to cooperate with you?
- A: Now, looking back on it, definitely I feel that these things all, in their totality, would have made him feel – I guess I can't speak for him but I feel like, yeah, they definitely probably made him feel, yeah, stressed, I guess.
- Q: You say "looking back on it" now, so does that mean you didn't realise this at the time?
- A: No, at the time, I wasn't picking up on these things. I wasn't picking up on them singularly and I wasn't picking up on them in their – in all of them being combined. I just wasn't aware of them, and I should have. I should have – I should have picked up on these things, but I didn't.
- Q: He's a vulnerable person, he's at the police station without a support person. During the interview he has asked for it to be stopped, he's asked to speak to a lawyer, you've denied him both of those things. How did you not pick up on it?
- A: I just think if I had more experience – I just don't think I had the experience. If someone had said something to me, if I was with someone who was more senior and they had said, "Hey, did you recognize what he just said", instantly I would have been doing something else. But I was with – I can't speak for [Officer PAM2], but he's more junior than me. I think he had only – he's probably two years behind me. I don't know if he was picking up on them or not or if he was just thinking that it was appropriate because I wasn't picking up on them, but I just – if someone had been there and just said to me, "This is what's happening, you need to stop and you need to deal with it." Even if it was just the first thing, right at the start of custody, with the custody period, or even at the search warrant, "You're not making notes, you need to make notes", I would have done something – I would have done all of that differently.

3.36. Although the interview concluded at around 3:10 pm, CCTV footage shows Officers PAM1 and PAM2 remained in the interview room with MAP1 and had a conversation with him until about 3:23 pm.³⁷ When asked what this conversation was about, Officer PAM1 said he could not recall what was specifically said, but he raised the question of whether MAP1 wanted to provide assistance to the police.³⁸

³⁷ This is also supported by the custody management records at Exhibit BVT3C.

³⁸ Private examination QWS at T34-36.

3.37. When MAP1 was taken back to the custody area from the interview room, he had a telephone conversation with MAP2, as noted in the custody management records.³⁹

3.38. Officer PAM3 did not seek to enquire as to why MAP1 participated in an interview:⁴⁰

Q: Were you present when [MAP1] returned from the interview and back into the custody area?

A: Yeah, I believe so. Yeah.

Q: Did you ask him why he participated in the interview despite the legal advice earlier?

A: No.

Q: Did it ever cross your mind to do so?

A: No.

Q: You just didn't care?

A: It's a decision he made. Like, I'm meant to be keeping quite independent of it. So I try not to get involved in the investigation too much.

Q: But did you confirm with him, that it was his decision?

A: No.

Q: Because you didn't care to do so?

A: No.

Q: So you did care?

A: Sorry, like, your question kind of confused me.

Q: Did you care to ask him whether it was his decision to participate in an interview?

A: I didn't ask him.

Q: Is that because you didn't care?

A: No, it's not because I didn't care.

Q: So you cared?

A: Your question is – like, I did not ask because I did not care. I don't –

Q: Why didn't you ask?

A: Because it wasn't – I didn't think it was necessary.

Q: Why didn't you think it was necessary?

A: Because he'd already spoken to ALS, he'd been read the Part 9, and prior to the interview normally – and after the interview you do

³⁹ Exhibit BVT3C.

⁴⁰ Private examination BVT at T23-24.

ask questions in regards to if there was any inducement, promise, like, “Did you take part in this interview of your own free will?” So after the interview I would have gone in and adopted it and all those questions would have been asked in there.

Q: But we’re talking about a vulnerable person here; correct?

A: That’s correct.

Q: Someone you are meant to go the extra mile with; correct?

A: Correct.

Q: And you didn’t do that in this case, did you?

A: No, that’s not correct.

Q: So are you saying you took extra precaution with [MAP1] because he was a vulnerable person?

A: Yes.

Q: How did you do that?

A: Again by ringing ALS, by offering him a support person, by checking on him and talking to him.

3.39. CCTV footage shows Officers PAM1 and PAM2 taking MAP1 into the interview room at around 4:16 pm. and the forensic procedure commencing at about 4:46 pm. This forensic procedure had been consented to by MAP1 and lasted about 10 minutes. However, the footage shows both officers having a conversation with MAP1 between 4:16 pm and 4:46 pm.

3.40. Officer PAM2 stated that this conversation related to MAP1 possibly providing information to police about the alleged offences.⁴¹

3.41. Officer PAM2 stated that he offered MAP1 to have a support person on 3 occasions – the first was when MAP1 was in the cells before being taken into the interview room for the forensic procedure, the second was in the interview room before the commencement of the recording of the forensic procedure, and the third was during the recording of the forensic procedure.⁴² MAP1 declined the offer to have a support person present.

⁴¹ Private examination HTL at T26.

⁴² Private examination HTL at T13-14.

Second interview in custody

- 3.42. According to Officer PAM2, at some point in time, MAP1 told him that he had a conversation with Officer PAM1 about wanting to participate in a second interview.⁴³
- 3.43. At about 5:00 pm MAP1 spoke to Ms Fard, solicitor, on the telephone in the custody area.⁴⁴ Officers PAM2⁴⁵ and PAM3 also spoke to Ms Fard on the telephone during this time.
- 3.44. Officer PAM2 asserted in his statement and his private examination that during this time Ms Fard never informed them that MAP1 did not want to participate in an interview.⁴⁶ In support of this, Officer PAM2 provided the Commission with a draft reply to Ms Fard's email in which he confirmed his version of events, although this email was never sent.⁴⁷
- 3.45. This email shows that on 28 May 2020 at 7:04 pm Ms Fard wrote:

Dear [Officer PAM2],

I confirm I act for [MAP1] ('my client')

I confirm my conversation with you concerning my client and note I advised you that my client did not want to participate in an interview and wished to exercise his right to silence.

I later contacted the station and was advised by [another officer] that he was in the interview room. This was contrary to the instructions from my client that I had communicated to you.

Would you please forward my client's charge and facts sheet.

- 3.46. Officer PAM2's draft response appears to be dated 22 July 2020 and was as follows:

Hi Negin,

Thank you for your email. I understand you act on behalf of [MAP1], although of our conversation you did NOT say that your client did not want to be interviewed.

⁴³ Private examination HTL at T32.

⁴⁴ Exhibit BVT3C.

⁴⁵ Private examination HTL at T15.

⁴⁶ Private examination HTL at T27-28.

⁴⁷ Private examination HTL at T28 and Exhibit HTL3C.

Your clients were informed of his rights, he willingly entered the interview and willingly answered police questions, which is accurately documented.

I will submit a copy of the charge to you next week. [sic]

3.47. Officer PAM3 was also questioned about this particular point in time:⁴⁸

Q: Do you see there in the top box at 5 o'clock you've made an entry about contact with Ms Fard?

A: Yep.

Q: And the "Comments" section is blank?

A: Yep.

Q: Why didn't you put anything in there?

A: She probably didn't ask me to. I didn't get any advice from her.

Q: So if a solicitor doesn't ask you to put anything in the custody management record then you don't?

A: We just create the action that they spoke to them. I don't know what they spoke about on the phone.

Q: Did you ask [MAP1] what he spoke about on the phone to her?

A: No.

Q: Did you care to ask?

A: I didn't think it was necessary.

Q: You weren't curious to know?

A: No, I try not to get involved in the investigation too much. I just make sure they speak to a solicitor.

Q: But again, part of your function is to assist a vulnerable person to access their right?

A: Mmm-hmm.

Q: And we saw after that, that he was taken out of the room by [Officer PAM2]. Is it your understanding that he was taken to the interview room?

A: From looking at – all I can go off is the custody management record. I can't remember but it looks like at 5.19 he was in the interview room. I presume he got taken into the ERISP room.

Q: Did that raise any concerns for you at all?

A: No.

Q: Why not?

A: Again, he'd just spoken to a solicitor. He must have decided to go into the interview room.

⁴⁸ Private examination BVT at T25-26.

Q: He had spoken to an ALS solicitor some hours earlier and, as you understand it, the advice was that he was not to participate in an interview or go into the interview room; correct?

A: Yes.

Q: Now he's done so, he's been in one interview, he's come out, he's had a phone call with a different solicitor and he's been taken into an interview room for a second interview. That didn't raise any concern for you?

A: No.

Q: Merely because he's spoken to the solicitor?

A: I presume so, yeah. He would have spoken to a solicitor. I don't – I didn't – I can't hear know the conversation. I don't know what they're talking about [sic].

Q: Were you able to hear what [Officer PAM2] was saying on the phone?

A: No, not really. I wasn't pay attention [sic].

Q: You didn't care to pay attention?

A: Again I try not to get involved too much in the investigation. I sit there and make sure he speaks to the solicitor and has his rights, you know.

3.48. The second interview with MAP1 commenced at about 5:19 pm. During this interview, MAP1 appeared confused when making certain admissions:⁴⁹

Q: What did you do while you were there?

A: Um, stole the cars, um, uh, yeah.

Q: These cars weren't stolen.

A: Huh?

Q: These weren't, these cars weren't stolen. They're stolen, the property was stolen from them.

A: Oh, was that the first one? Yeah, all right. Um, yeah, um, I guess we searched the cars and see if we could spot, find a spare key or anything and, um, yeah.

3.49. Officer PAM1 was asked about this during the private examination:⁵⁰

Q: Does it appear to you that MAP1 was somewhat confused about what was being put to him?

A: Yeah, from that response, yes.

Q: He thought he had stolen cars when you were actually putting to him that property from inside the cars had been stolen?

A: Yes.

⁴⁹ Exhibit QWS5C at T4.

⁵⁰ Private examination QWS at T64.

- Q: Given that, did that raise an issue in your mind as to the reliability of his admissions in the second interview?
- A: At the time I just thought he was confused, as I guess was I, with the amount of sequences or the amount of incidences, and I think when he was talking about that, it was the same night that the two cars were stolen, but this was the first of those string of offences that occurred that night, and they're – the property that was stolen from those cars – I think he was confusing those two incidences.

But yeah, I didn't at the time realise that there was a – I wasn't concerned as much as I should have. I probably should have said, "Look, do you understand what's going on? Do you understand what we're talking about? Do you understand where we're talking about, what time we're talking about", and discussed all those things with him.

3.50. When Officer PAM2 was questioned about this, he said the following:⁵¹

- Q: Did it appear to you that there was some confusion in relation to what [MAP1] was admitting to?
- A: Reading it, yes.
- Q: He was admitting to stealing vehicles whereas the allegation was that something from the vehicles had been stolen, not the vehicles themselves?
- A: Yes.
- Q: Based on this exchange and the fact that [MAP1] was a vulnerable person and he didn't have a support person with him on that day, and he had spoken to two different lawyers and he had also made denials in the first interview, did you ever question the reliability of an admission like this?
- A: At the moment – at the time, no. Now, I – yes, it – raises flags.

3.51. Further, during the private examination Officer PAM1 was questioned about his concern relating to MAP1's admissions in the second interview:⁵²

- Q: And did it concern you at the time that even though he wanted to make admissions in an interview, when you did finally conduct the second interview, he had a very vague memory about some of the things? Did that ever concern you?
- A: I didn't pick up on that at the time. I just – it would have concerned me, I think, if I had picked up on it, I just didn't pick up on it. I think, yeah – like I noticed in – even in the interview footage, I was drinking, like, a Red Bull can, I was, you know, stretching, I think I might have been tired as well. I just should have picked up on these things but I didn't.

⁵¹ Private examination HTL at T34-35.

⁵² Private examination QWS at T66.

Q: In hindsight, do you think that affects the reliability of his admissions?

A: In hindsight?

Q: Yes.

A: Now?

Q: Yes.

A: It could be perceived that way, yes.

3.52. The issue of the reliability of MAP1's admissions was subsequently put to Officer PAM1 in totality:⁵³

Q: I'll just put it all into context for you. [MAP1] was a vulnerable person. He was at the police station with you and [Officer PAM2]. He didn't have a support person. He had spoken to two different legal representatives. During the first interview, he had asked for the interview to be stopped and that wasn't done; he had asked to speak to a lawyer, that wasn't allowed. Now, a second interview has been done where, apparently, he is making admissions, and early on I showed you that his admission as to stealing the cars was wrong. What I'm asking you is: at the time, did you have any serious concerns about the reliability of his – of what he was telling you in the second interview, given everything that had happened already that day?

A: I think I was just going through the motions, that's a succinct or short way to put it. I wasn't picking up on anything. You know, I've made a lot of mistakes here. I think with more experience, if I could just pick up on – if I had picked up on one of them, I would have been able to take appropriate action to stop all of these other things occurring, but I just think [I] didn't pick up on them.

3.53. MAP1 was subsequently charged at about 6:42 pm.⁵⁴

Prosecution in court

3.54. The charges against MAP1 proceeded in the NSW District Court before Judge Herbert. Prior to the commencement of the trial, MAP1's legal representatives made an application to have the 2 interviews excluded from evidence pursuant to ss 84, 85, 90, 137 and 138 of the *Evidence Act 1995*. The Crown opposed such an application.

3.55. Relevantly, s 138 of the *Evidence Act 1995* provides as follows:

(1) Evidence that was obtained:

⁵³ Private examination QWS at T69.

⁵⁴ Exhibit BVT3C.

- (a) improperly or in contravention of an Australian law, or
- (b) in consequence of an impropriety or of a contravention of an Australian law,

is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained.

- (2) Without limiting subsection (1), evidence of an admission that was made during or in consequence of questioning, and evidence obtained in consequence of the admission, is taken to have been obtained improperly if the person conducting the questioning:
 - (a) did, or omitted to do, an act in the course of the questioning even though he or she knew or ought reasonably to have known that the act or omission was likely to impair substantially the ability of the person being questioned to respond rationally to the questioning, or
 - (b) made a false statement in the course of the questioning even though he or she knew or ought reasonably to have known that the statement was false and that making the false statement was likely to cause the person who was being questioned to make an admission.
- (3) Without limiting the matters that the court may take into account under subsection (1), it is to take into account:
 - (a) the probative value of the evidence, and
 - (b) the importance of the evidence in the proceeding, and
 - (c) the nature of the relevant offence, cause of action or defence and the nature of the subject-matter of the proceeding, and
 - (d) the gravity of the impropriety or contravention, and
 - (e) whether the impropriety or contravention was deliberate or reckless, and
 - (f) whether the impropriety or contravention was contrary to or inconsistent with a right of a person recognised by the International Covenant on Civil and Political Rights, and
 - (g) whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention, and
 - (h) the difficulty (if any) of obtaining the evidence without impropriety or contravention of an Australian law.

3.56. The evidence adduced for the pre-trial application relating to the identification of MAP1 as a suspect consisted of the following:⁵⁵

- Admissions made in the second interview;
- MAP2's vehicle being identified on the Harbour Bridge some seven minutes after one of the stolen vehicles;

⁵⁵ Exhibit BVT4C at T2.

- Clothing items found at MAP1's home were consistent with those worn during the offences; and
- Location of gloves and a screwdriver in MAP2's vehicle.

3.57. In her judgment of 1 April 2022, Judge Herbert found that MAP1 had clearly exercised his right to silence through his lawyers:⁵⁶

This is a matter where there was an unequivocal communication of the accused's decision to exercise his right to silence. Thereafter, the investigating police should not have taken the accused to the interview room for any reason other than to conduct a forensic procedure. I am satisfied that what occurred falls below the minimum standards of acceptable police conduct. Contravention of the accused's right to silence, particularly as a vulnerable person, and in the absence of a support person is very grave.

3.58. Additionally, in excluding the first interview, Judge Herbert found that Officers PAM1 and PAM2 made statements that were false and statements consistent with intending to put pressure on MAP1 to make admissions.⁵⁷

3.59. It is pertinent to observe that Judge Herbert found that MAP1 was 'a person who has been diagnosed to be no better than low-average and predominantly in the borderline range of intelligence' although the police may not have been aware of this fact.⁵⁸ Her Honour observed that MAP1's 'intellectual limitations would have increased his vulnerabilities'.⁵⁹

3.60. Judge Herbert concluded that the first interview had been obtained improperly and illegally, and the gravity of the impropriety was high. Accordingly, this interview was excluded pursuant to s 138 of the *Evidence Act 1995*.

3.61. In relation to the second interview, Judge Herbert excluded this pursuant to s 85 of the *Evidence Act 1995*, which provides as follows:

- (1) This section applies only in a criminal proceeding and only to evidence of an admission made by a defendant:
 - (a) to, or in the presence of, an investigating official who at that time was performing functions in connection with the investigation of the commission, or possible commission, of an offence, or

⁵⁶ Exhibit BVT4C at T28.

⁵⁷ Exhibit BVT4C at T30-31.

⁵⁸ Exhibit BVT4C at T35 and T37.

⁵⁹ Exhibit BVT4C at T40.

(b) as a result of an act of another person who was, and who the defendant knew or reasonably believed to be, capable of influencing the decision whether a prosecution of the defendant should be brought or should be continued.

(2) Evidence of the admission is not admissible unless the circumstances in which the admission was made were such as to make it unlikely that the truth of the admission was adversely affected.

(3) Without limiting the matters that the court may take into account for the purposes of subsection (2), it is to take into account:

(a) any relevant condition or characteristics of the person who made the admission, including age, personality and education and any mental, intellectual or physical disability to which the person is or appears to be subject, and

(b) if the admission was made in response to questioning:

(i) the nature of the questions and the manner in which they were put, and

(ii) the nature of any threat, promise or other inducement made to the person questioned.

3.62. Judge Herbert was not satisfied that the prosecution had discharged the onus required to establish that the circumstances in which the admissions were made were such as to make it unlikely that the truth of them was adversely affected.⁶⁰ In coming to this conclusion, Judge Herbert took into account a number of circumstances, including that police had made a number of statements to MAP1 that they knew to be false or ought reasonably to have known were false, MAP1's attempts to stop the interview were ignored and that the police threatened to charge MAP2.⁶¹ In the alternative, Judge Herbert was also satisfied that this second interview ought be excluded pursuant to s 138 of the *Evidence Act 1995*.

3.63. As noted earlier, the criminal proceedings against MAP1 in the District Court were withdrawn after the decision of Judge Herbert on 1 April 2022 excluding the 2 records of interview. This course was taken by the Director of Public Prosecutions as the prosecutor in indictable proceedings in the District Court. The Commission has been informed that thereafter an order for costs was made in favour of MAP1. As there is no power to order costs against the Crown in indictable proceedings,⁶² it may be taken that MAP1 made a successful

⁶⁰ Exhibit BVT4C at T38.

⁶¹ Exhibit BVT4C at T34-38.

⁶² *R v Mosely* (1992) 28 NSWLR 735 at 738-739.

application under the *Costs in Criminal Cases Act 1967*. Where a certificate is granted under that Act, the successful applicant may apply for costs to be paid from the Consolidated Fund.⁶³ Unlike a costs order under ss 212-214 of the *Criminal Procedures Act 1986*, there is no costs order made against the prosecutor.

Record keeping in the NSW Police Force of District Court outcomes and judicial criticisms of police officers

3.64. Officer PAM1 was asked about a court order for costs in favour of MAP1:⁶⁴

Q: So you weren't aware that costs were granted at the end of the proceedings?

A: No.

Q: Is it normal for police not to be aware of such things?

A: I don't know. I don't really think I've ever had that happen before. I've never been aware of it, and I'm not too sure if we don't get told or we do get told.

3.65. Officer PAM1 was also asked about internal procedures within the NSW Police Force in relation to prosecutions that are discontinued:⁶⁵

Q: And when proceedings are discontinued at the District Court level, are there any internal procedures that you, as the case officer, have to follow?

A: I guess, like, you've got to finalise the case on COPS, so you just note that the matter went to hearing and you lost and – yeah, I'm not too sure about other procedures.

Q: Do you have to write a report to your supervisors?

A: I'm not sure.

Q: In this case, did you ever write a report to your supervisors?

A: I can't recall.

Q: Did you report in some other way to your supervisors about what had happened?

A: I – I honestly can't remember what I did after the matter finished.

3.66. Officer PAM1 also stated that he received a copy of Judge Herbert's judgment from the Office of the Director of Public Prosecutions and forwarded it to either a supervisor or another officer involved in the investigation.⁶⁶

⁶³ Section 4 of *Costs in Criminal Cases Act 1967*; *Rodden v R* (2023) 112 NSWLR 162.

⁶⁴ Private examination QWS at T13.

⁶⁵ Private examination QWS at T13.

⁶⁶ Private examination QWS at T14-15.

3.67. Officer PAM2 stated that he became aware of the court results when Officer PAM1 forwarded him an email from the DPP, however he did not know that costs had been awarded.⁶⁷ Additionally, he stated that he did not have to write a report regarding the court outcome.⁶⁸

Q: Well, I'll try to be more specific. Did you have to write a report to anyone?

A: No.

Q: Did [Officer PAM1] have to write a report to anyone?

A: I'm not aware of – that he did.

Q: Are you aware of any procedures relating to this type of situation?

A: No.

Q: So in a normal case where the NSW Police has a matter and it goes to trial in the District Court and it gets discontinued, as far as you're concerned, there is no report writing or no procedures that are required to be followed by the officers in charge?

A: I didn't complete any reports. I'm not aware – I haven't had a matter like that myself.

Q: Did you ever speak to any supervisors or colleagues about the outcome of the trial?

A: From my memory, no.

Q: So after the charges were discontinued, you had nothing further to do with this matter?

A: Not other than this – this hearing, no.

...

Q: You've been asked some questions about what procedures, to your knowledge, existed if there was a discontinued prosecution and about notifying anyone. Here there was a judgment of a judge finding the evidence should be excluded as improperly obtained evidence, with some criticisms of police officers. As far as you know, was there any procedure, as at April of 2020, for such a decision to be notified to any superiors within the police force to decide what, if anything, should happen, given a ruling like that?

A: To my knowledge, I – not that I'm aware of.

3.68. Officer PAM3 stated that he had previously performed roles in general duties, proactive crime teams and high-visibility policing, and provided the following in terms of NSW Police Force policies and procedures regarding record keeping of court results:⁶⁹

⁶⁷ Private examination HTL at T10.

⁶⁸ Private examination HTL at T10-11.

⁶⁹ Private examination BVT at T34-35.

- Q: In your experience, and you can say if you haven't had this experience before, but when there's a police matter that proceeds to a District Court trial and the charges are discontinued, are there any internal procedures that the case officer needs to follow or do? For example, maybe writing up the report or reporting to supervisors about the outcome of the case?
- A: I think the prosecutor does it. Like, if it's a trial. I'm not sure. I haven't – like, trials I've ran got completed, so I haven't actually had a trial that got withdrawn.
- Q: When you say the prosecutor does it, you mean if it's in the local court?
- A: Yeah, local court, sorry.
- Q: The police prosecutor will write a failed prosecution report?
- A: Yeah, yeah.
- Q: This one was in the District Court?
- A: I haven't got experience with that.

Resolution of issue

- 3.69. On 9 January 2024, the Commission issued a notice to the NSW Police Force pursuant to s 54 of the LECC Act seeking a statement of information in response to the following:
- (i) whether there are any NSW Police Force policies, procedures or guidelines that apply or are to be followed when charges initiated by the NSW Police Force are discontinued or withdrawn in the NSW District Court;
 - (ii) what obligations or practices do investigating or case officers have to follow when their matters are discontinued or withdrawn in the NSW District Court; and
 - (iii) whether investigating or case officers have to report, either formally or informally, the outcome of their matters being discontinued or withdrawn in the NSW District Court. If so, please describe these reporting methods or procedures.
- 3.70. On the same day, the Commission also issued a notice pursuant to s 55 of the LECC Act seeking any policies or procedures which outline the course of action that NSW Police officers must follow when a failed prosecution occurs in the District Court of NSW.
- 3.71. On 24 January 2024 the NSW Police Force responded to both notices with the following:

The NSW Police Force does not have any policies or procedures in place that NSW Police Officers must follow when a failed prosecution occurs in the District Court of NSW. There are various reasons a prosecution may fail in the District Court, and that on many occasions a police officer is not present when this occurs. Also, the Director of Public Prosecutions is not obliged to share with the NSW Police Force the reasons a particular matter was withdrawn.

Every employee of the NSW Police Force is bound by s 211(F) of the Police Act to report misconduct, however that obligation would not apply to matters in the District Court of NSW withdrawn for reasons that do not involve misconduct, for example due to a key witnesses resiling from their statement [sic].

If a member of the NSW Police Force is aware that a matter was discontinued or withdrawn due to misconduct they are duty bound to report the misconduct to a senior officer. The senior police officer to whom a report is made must report it in writing to the Commissioner.

The NSW Police Force is currently negotiating with the Director of Public Prosecutions to formalize a process where her staff will notify the NSW Police Force of any matters where they identify misconduct. The NSW Police Force is happy to provide a copy of that process to the Commission when it is finalised.

- 3.72. As a result of further correspondence from the Commission, the NSW Police Force informed the Commission on 4 June 2024 that on 2 April 2024 the NSW Police Force had entered into an agreement with the NSW DPP entitled 'Protocol for the Notification of Judicial Criticism of NSW Police Officers'. By letter dated 27 June 2024, the NSW Police Force informed the Commission that there was no objection to the publication of this Protocol as an Appendix to this Report. The NSW DPP has consented to the publication of it in the Appendix.
- 3.73. The Commission considers it to be important to publish the Protocol between the NSW Police Force and the NSW DPP. The creation of the Protocol is a direct result of the Commission's investigation in Operation Pamir. The Protocol appears as Appendix 3 to this Report.
- 3.74. In response to a further enquiry from the Commission, the NSW Police Force informed the Commission on 27 June 2024 that it is in discussions with the Commonwealth Director of Public Prosecutions to develop a similar procedure where a NSW police officer or officers are witnesses in a Commonwealth prosecution. Such a procedure is highly desirable and the Commission recommends that it should be implemented.

Statement of Officer PAM1

3.75. Officer PAM1 made a statement dated 2 July 2020. During his private examination, he admitted that there were inaccuracies in the statement:⁷⁰

Q: I'm suggesting to you that this is the telephone call with the ALS that you referred to in paragraph 30?

A: Yes, it's inaccurate on my behalf.

Q: Did you say it's inaccurate?

A: Well, it's not right – it's not correct. It's not true.

Q: What do you mean by that?

A: When I made my statement, what's in there doesn't reflect what the CCTV is showing.

Q: Well, in your statement you said that after [MAP1] was read his rights under Part 9, that ALS was contacted by telephone and he spoke with the ALS. What's incorrect about that?

A: That I observed that happening, that I was there for it. I think I just was a bit sloppy when I was writing my statement and I didn't think it was a – like, a big issue, and it's something that goes in most of my statements in relation to arrests and persons in custody. I just didn't pay it the detail or attention that it required.

3.76. Further, his statement claimed that MAP1 made admissions after the first interview and before the second interview:

After signing the copies of the discs [Officer PAM2] and I accompanied the accused back to the custody area. Once there the accused asked me if he would be charged in relation to the offences being investigated and I explained that I believed there was sufficient evidence to present to the court that he was the person responsible for those offences. The accused then indicated he wished to tell the truth and be interviewed again.

The accused said – So what's going to happen? Am I being charged?

I said – Yeah, I believe there is sufficient evidence and prior to the interview you wanted to know what we had. I've shown you the photographs of a person wearing the same clothing we seized from your house, carrying the same yellow handled screwdriver we seized from your house and that person stole the same Yeezy brand shoes we seized from your house. How much more do you want? It's a big coincidence and I think the court is going to have to determine what the truth is.

The accused said – Yeah, it's a lot. But last time they had phone records and all that.

⁷⁰ Private examination QWS at 22.

I said – It's up to you. I just obtain evidence and present that to the court. The interview is part of the brief. The facts sheet is going to reflect that you denied all the offences when we put them to you and that you stated you didn't want to identify yourself because we would be able to figure out who's in the photo from your phone. I can only present the facts, that's my job. Stuff that proves you did it and stuff that proves you didn't do it both have to go in there.

The accused said – If I'm gonna be charged I think I'm better off admitting to it. I just want to get back to my girl. Can we go back in?

I said – You want to participate in another interview? I haven't got anything else to put in front of you or ask you about apart from what we spoke about already.

The accused said – Yeah, I'll be honest for what you've got me for.

- 3.77. The CCTV footage, however, shows only a brief exchange when Officer PAM1 took MAP1 back to the custody area. When it was put to Officer PAM1 that the conversation in his statement could not have taken place at this time, he stated he could not recall when the conversation took place:⁷¹

Q: And if it was, I'm going to suggest to you that the conversation that you set out at paragraph 35 could not have happened at this time, given what we've just seen from the video at tab 75; do you agree or do you disagree?

A: I – I can't recall when that conversation occurred. I agree that there's a conversation occurring there. I don't know what it is. And obviously my statement has errors in it, and this may be an error as to where that conversation occurred, and I'm not sure what's being said here.

Q: It's just that in your statement at paragraph 35, you stated, after accompanying the accused back to the custody area:

Once there the accused asked me if he would be charged in relation to the offences being investigated...

And then you've gone on to set out the conversation you had with him, where he basically says that if he's going to be charged, he's better off admitting to it. Are you able to tell me, from what we've seen in the video, how that conversation could have taken place? Because it looks like, from the video, only a few words were ever exchanged, and this conversation also involves [Officer PAM3].

A: Yes. That's correct. It may have occurred when we were in the interview room. Like I said, my statement – I agree and I acknowledge that there's errors in that statement, and I – I can't recall now where those conversations occurred and which conversation is which. I should have made records to that effect to

⁷¹ Private examination QWS at T38-40.

assist with identifying this, but I – in relation to this conversation I can't say what it's about.

...

Q: I suggest to you that this conversation didn't happen in the custody area immediately after you returned from the first interview?

A: I can't recall where it happened.

Q: And I suggest to you that this conversation actually never occurred at any time?

A: No, it definitely occurred.

3.78. Officer PAM1 also conceded that his statement contained an error as to when MAP1 spoke with solicitor Ms Fard:⁷²

Q: But what I'm suggesting to you is that the conversation that [MAP1] had with Ms Fard actually happened at 5pm.

A: Yes, if that's her on the phone. I don't know what document I was relying on or if I was doing this from my memory, but it is consistent with being – it is incorrect. The timings are out. I'm not in the custody area. I'm not witnessing these phone calls. I should have made more – paid more attention to detail and – in making my statement.

Consideration of issues

Legal advice given by ALS to MAP1

3.79. Although Officer PAM1 could not recall speaking to MAP1 or Officer PAM3 about the substance of MAP1's call with the ALS, the Commission is satisfied that he was aware of it at some point in time prior to the first interview. This is because Officer PAM3 states that he relayed the ALS advice to Officers PAM1 and PAM2 as this was his normal routine⁷³ and Officer PAM2 also stated that he was told by Officer PAM1 that MAP1 had spoken to ALS.⁷⁴

Impropriety of first interview

3.80. The Commission finds that a number of improprieties occurred during the first interview.

3.81. First, Officer PAM1 stated that MAP2's vehicle had been captured on toll booth cameras driving with one of the stolen vehicles across the Harbour Bridge. This

⁷² Private examination QWS at T43.

⁷³ Private examination BVT at T12.

⁷⁴ Private examination HTL at T14 and T31.

was not true as MAP2's vehicle crossed the bridge about 7 minutes after the stolen vehicle.

- 3.82. Second, MAP1 had indicated 5 times that he wanted to stop the interview so he could speak to a legal practitioner. This request was ignored each time and the officers continued to question MAP1. Officer PAM1 stated that he continued questioning MAP1 despite these requests because he wanted to put the allegations to MAP1. This is not an acceptable reason for continuing the interview and demonstrated a blatant disregard for MAP1's right to silence.
- 3.83. Officer PAM2 stated that he was not aware of MAP1's requests to speak to a legal practitioner because he was listening for inconsistencies in what MAP1 was saying. It is difficult to understand how a police officer can listen to a person speaking and only pay attention to what they are looking for but ignore anything else that is said. This conduct of Officer PAM2 was completely unacceptable and failed to meet the standards required of a member of the NSW Police Force.
- 3.84. Third, Officer PAM1 applied undue pressure on MAP1 by referring to MAP1's family and implying that there were people MAP1 should be worried about. There was no purpose in mentioning these things to MAP1 during the interview other than to pressure him into making admissions.

Impropriety of second interview

- 3.85. Ms Fard made an affidavit for the District Court proceedings in which she stated she had advised Officer PAM2 that MAP1's instructions were to not participate in an interview. She was also able to produce to the District Court her contemporaneous notes which were consistent with her affidavit. The custody management records show that MAP1 had a telephone conversation with Ms Fard but no details were entered in the comments section. Officer PAM2 denied that Ms Fard had told him as such, and in support of this he provided a draft email intended for Ms Fard to confirm this.
- 3.86. On balance, the Commission accepts Ms Fard's version of events, namely that she told Officer PAM2 of MAP1's instructions. This finding is largely reliant on the fact that Ms Fard had sent a contemporaneous email to Officer PAM2 confirming that this in fact occurred. On the other hand, Officer PAM2's email purporting to support his version of events was only ever a draft and never sent.

It is also curious as to why he was prepared to respond to Ms Fard's email almost 2 months later. The Commission notes that Judge Herbert accepted Ms Fard's evidence in this respect.

- 3.87. Accordingly, the first impropriety of the second interview was that Officer PAM1 had MAP1 participate in it despite knowing the instructions he had given to Ms Fard.
- 3.88. The second was that both officers continued to question MAP1 despite him displaying obvious confusion to the point where the reliability of what he was saying should have been questioned. An example of this occurring was when MAP1 admitted to stealing cars that were not actually stolen. This second factor should be considered in the context of all the circumstances leading up to the second interview, including the fact that MAP1 wanted to stop the first interview and that he had advised, through Ms Fard, that he did not want to participate in the second interview.
- 3.89. The third impropriety was that it was again put to MAP1 that MAP2's vehicle had crossed the bridge at the same time as one of the stolen vehicles.⁷⁵

The conduct of Officer PAM3

- 3.90. The NSW Police Force Standard Operating Procedures for Charge Room and Custody Management set out, amongst other things, the role of a custody manager.⁷⁶ Relevantly, it states that 'the custody manager is responsible for ensuring the rights of the PIC [person in custody] are maintained in line with Part 9 of LEPR'.
- 3.91. Further, it states that a custody manager is to "determine if the PIC falls into the category of a vulnerable person and take appropriate action regarding their vulnerability" and that if a person is a vulnerable person, the custody manager 'must, as far as practicable, assist the PIC to exercise their rights under Part 9 of LEPR, including any right to contact a legal practitioner, support person or other person'.

⁷⁵ Exhibit HTL5C at T23.

⁷⁶ 'Charge Room and Custody Management' Standard Operation Procedures version 1.5 as of November 2020.

- 3.92. This is a reflection of Clause 29 of the *Law Enforcement (Powers and Responsibilities) Regulation 2016* (the LEPR Regulation) which provides:
- (1) *The custody manager for a detained person or protected suspect who is a vulnerable person must, as far as practicable, assist the person in exercising the person's rights under Part 9 of the Act, including any right to make a telephone call to a legal practitioner, support person or other person.*
- 3.93. In the present case, Officer PAM3 offered MAP1 a support person and facilitated telephone calls to the ALS and Ms Fard, in addition to recording them in the custody management records. He claims he advised Officers PAM1 and PAM2 of the first call with the ALS.
- 3.94. Officer PAM3 did less than the bare minimum in this respect, and he did not seek to go above that. He did not make any enquiries when he realised MAP1 had participated in the first interview. Even accepting his version of events that what was relayed to him was advice as opposed to instructions, being aware that MAP1 was a vulnerable person, he should have sought to clarify as to why MAP1 participated in the first interview. If a custody manager is aware that a person in custody has received advice not to participate in an interview but subsequently does so, the custody manager should seek to clarify the person's understanding of what is happening and ask whether the person would like to speak to their lawyer again. This way, there could be no criticism of a custody manager failing to comply with Clause 29 in, 'as far as practicable', assisting a person in custody to exercise their rights under Part 9 of LEPR.
- 3.95. This is exacerbated by the conduct of the second interview. Officer PAM3 had some involvement in MAP1's call to Ms Fard, so he was aware that MAP1 had received legal advice for the second time. However, he did not record the substance of this call in the custody management records. He also did not make any efforts to find out what advice or instructions had been given.
- 3.96. Shortly after this call, Officer PAM3 was aware that MAP1 was being taken to an interview room again by the investigating officers, yet this did not concern him. He made no efforts to clarify why a vulnerable person would speak to 2 different lawyers and then participate in 2 interviews, despite being advised not to participate in the first one. It did not cross his mind that MAP1 would have

received similar advice from Ms Fard. All Officer PAM3 was concerned about was meeting the bare minimum standards of his obligations as a custody manager.

- 3.97. Ultimately, Officer PAM3 failed to demonstrate an understanding of the distinction between the giving of legal advice by a legal practitioner, and the giving of instructions by a person in custody to their legal practitioner. This failure appears to have coloured Officer PAM3's understanding of his obligations and duties as a custody manager. Officer PAM3 should have asked MAP1 a question to the effect of 'your lawyer has informed me that you do not wish to be interviewed about this matter, is this your wish?' This would ensure that a custody manager would be in compliance with Clause 29 of the LEPR Regulation.
- 3.98. A custody manager exercises important protective functions inside the police station concerning persons in custody. This calls for proactive attention and action by the custody manager in discharge of duties under LEPR and the LEPR Regulations. The conduct of Officer PAM3 fell far short of the proper exercise of his important statutory duty as custody manager. He was a type of passive observer of significant failures on the part of Officers PAM1 and PAM2. The approach of Officer PAM3 to the performance of his duties as custody manager warrants significant criticism.

Statement of Officer PAM1

- 3.99. Officer PAM1 conceded that there were a number of errors or inaccuracies in his statement, namely:
- (i) That he observed ALS being contacted for MAP1;
 - (ii) Where and when the conversation with MAP1 occurred where MAP1 purportedly agreed to participate in a second interview so that he could make admissions (although he maintained that this conversation did take place); and
 - (iii) When the conversation between MAP1 and Ms Fard took place.
- 3.100. The Commission does not find that Officer MAP1 made these statements knowing that they were false, but rather he was reckless in making these statements.

4. Operation Mantus

- 4.1. The Commission considered similar issues in Operation Mantus, where a 14 year old Aboriginal young person was chased and tackled by a police officer in September 2022. As a result, his head was bleeding and he said that he had been punched by the police officer. The young person was taken to the hospital first, and then to the police station upon discharge.
- 4.2. The custody manager in Operation Mantus arranged for the young person to speak with a solicitor from the ALS, and he was given advice about his right to silence. The young person chose to exercise his right to silence and the ALS solicitor informed the custody manager of those instructions, both verbally on the telephone and via an email. Despite this, the young person was interviewed by investigating officers later that morning.
- 4.3. The Commission investigated a number of issues arising out of the incident, but one issue pertinent to MAP1 was whether it was a systemic issue within the NSW Police Force to interview young persons even after they had received legal advice and declined an interview.
- 4.4. The Commission found that there was a systemic problem within the NSW Police Force of officers interviewing vulnerable people after they had received legal advice and said that they did not wish to be interviewed. This is despite internal protocols and directions issued in 2004 and 2005 to the effect that if a young person exercised their right to silence, then this should be recorded and the young person should not be interviewed.
- 4.5. The Operation Mantus report, published in December 2023, made 19 recommendations. Relevantly to this case, those recommendations include:
 - (i) 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 operation (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 (Recommendation 1).

- (ii) 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 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 (Recommendation 2).
- (iii) 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 (Recommendation 8).
- (iv) 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 to ensure appropriate steps are taken to assist operational police and for training purposes (Recommendation 10).
- (v) Specific training should be provided by the NSW Police Force to custody managers:
 - a. about their role in relation to people who have been arrested
 - 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
 - c. that they must speak to investigating police before any interview takes place with the person in custody
 - d. that any refusal by a person to be interviewed (whether communicated directly or through a lawyer) must be clearly communicated to investigating police
 - e. that any refusal to be interviewed must be recorded in custody management records

- 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
 - 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)
 - 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 (Recommendation 14).
- (vi) That Clause 29 of the LEPRA Regulation be amended so as to provide:

29(3) If a detained person or protected suspect in police custody who is a vulnerable person:

 - (a) has declined to participate in an interview following legal advice, and
 - (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 representatives who provided the advice and allow the person in custody to confirm their legal advice and their position prior to any interview taking place (Recommendation 16).
- (vii) That Clause 29 of the LEPRA Regulation be amended to include a provision to the following effect:

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 (Recommendation 17).

4.6. On 8 March 2024, the NSW Police Force responded to the above recommendations as follows:

(i) **Supported**

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.

This communication outlined instructions in the following areas:

- Legislative requirements
- Procedure to be followed when a young person is arrested
- Role of the support person
- Doli incapax

Prior to the release of the Commission's Operation Mantus report, the NSWPF commenced scoping a review of the Charge Room & Custody Management Standard Operating Procedures (SOPs). This review will incorporate the instruction issued on 10 December 2023.

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.

(ii) **Under consideration**

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.

The NSWPF notes that, as reflected in our response to recommendation 1, direction was issued on 10 December 2023 which states that...*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.*

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.

The NSWPF is willing to explore further opportunities for consultation with the Commission on this matter.

(iii) **Not supported**

The NSWPF refers to our submissions to the Commission during the Operation Mantus hearings regarding the term "interviewed by informal means".

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.

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.

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.

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.

The NSWPF's BWV SOPs provide guidance to NSWPF officers regarding the use of BWV when interacting with vulnerable people.

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.

(iv) **Supported in principle**

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.

Advice from the Operational Legal Advice Unit (OLAU) within the Police Prosecutions & 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.

Recent examples include: *Kvelde v State of New South Wales* [2023] NSWSC 1560 and *BA v The King* [2023] HCA 14. Relevantly, OLAU is preparing a Law Notes publication re *Mann v R* [2023] NSWCCA 256.

(v) **Supported in principle**

The NSWPF supports the Commission's recommendation regarding (a), (b), (c), (d), (e) and (h).

In relation to these parts of the recommendation:

- (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.
- (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 s 211F of the *Police Act 1990* to lodge a misconduct matter report. No further changes are proposed.
- (c) The NSWPF agrees with the Commission and will update the Advance Custody Course and Custody Fundamentals to include this content.
- (d) The NSWPF agrees with the Commission and will update the Advance Custody Course and Custody Fundamentals to include this content.
- (e) The NSWPF agrees with the Commission and will update the Advance Custody Course and Custody Fundamentals to include this content.
- (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.

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.

The following direction was provided in the NEMESIS communication issued on 10 December 2023:

If a young person initially indicates they do not wish to be interviewed, they can change their mind and be interviewed.

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.

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.

(vi) **Under consideration**

The NSWPF notes this recommendation is to be directed to the Attorney General.

As stated in our response to recommendation 2, the NSWPF is willing to explore further opportunities for consultation with the Commission on this matter.

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.

(vii) **Under consideration**

The NSWPF notes this recommendation is directed to the Attorney General.

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.

However, the NSWPF is willing to explore further opportunities for consultation with the Commission on this matter.

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.

- 4.7. A number of the issues which gave rise to these recommendations in Operation Mantus have application to Operation Pamir. Although MAP1 was an adult, he was a vulnerable person under LEPR as he was an Aboriginal person with intellectual limitations.⁷⁷ There is no evidence that the officers involved were aware of MAP1's intellectual limitations, and there is no criticism made of them for not having such an awareness. Despite this, the deficiencies in the approach of the custody manager and the interviewing police officers towards MAP1 constitute further illustrations of the failures identified in Operation Mantus.

⁷⁷ Clause 28 of the *Law Enforcement (Powers and Responsibilities) Regulation 2016*.

- 4.8. For reasons explained in the Operation Mantus Report, these were systemic failures by the NSW Police Force to provide appropriate training and support to police officers in this very important area. The position is compounded further in Operation Pamir by the relative inexperience of the police officers which culminated in a series of acts and omissions that constituted impropriety and led to the exclusion of the 2 interviews at the pre-trial hearing.

5. Submissions received

- 5.1. The Commission provided a draft copy of this Report to legal representatives of Officers PAM1, PAM2 and PAM3, as well as the NSW Police Force for the purpose of making submissions. In response, submissions were received from the legal representatives of Officers PAM1, PAM2 and PAM3, which are summarised and addressed below.
- 5.2. It was submitted on behalf of Officer PAM1 that a finding of serious misconduct should not be made for the following reasons:

- (i) A factual finding cannot be made that Officer PAM1 knew about the substance of the call between MAP1 and ALS, because Officer PAM1 was not given the opportunity to test the evidence of Officer PAM2 about Officer PAM2 having been told by Officer PAM1 that MAP1 had spoken to ALS, nor was he given the opportunity to test the evidence of Officer PAM3 about it being his normal routine to relay the ALS advice to Officers PAM1 and PAM2.

Further, Officer PAM3's evidence was "indefinite" as he did not have a specific recollection, but relied on his usual practice that he "would have" informed Officers PAM1 and PAM2 of the telephone call.

The Commission accepts that based on Officer PAM3's evidence alone, it cannot be said that Officer PAM1 would have known about the substance of the call between MAP1 and ALS. However, with the addition of the evidence of Officer PAM2, the Commission is satisfied that Officer PAM1 knew that the call between MAP1 and ALS had taken place, but did not know the substance of that call.

- (ii) When Officer PAM1 stated to MAP1 in the first interview that both vehicles had travelled in convoy across the Harbour Bridge, he was 'inaccurate by degrees, rather than putting a proposition which had no factual foundation at all'.

The Commission rejects this submission as Officer PAM1 stated that in the NSW District Court he ‘conceded that that’s not the definition or that’s not the way that a convoy works’.⁷⁸

- (iii) Continuing to question MAP1 during the first interview when he had requested on five occasions to stop so he could seek legal advice is not a basis for a finding of serious misconduct, as the issue can be dealt with by trial courts as they are ‘empowered to address cases of excessive exuberance of investigators by excluding evidence’.

Further, this is an issue which is more appropriately addressed by clear instructions from the NSWPF and associated training.

The Commission rejects this submission. The function of the courts in excluding evidence in criminal trials is vastly different to the statutory functions of the Commission in investigating and making findings of serious police misconduct. Merely because a court has excluded evidence does not eliminate the Commission’s statutory function to investigate serious misconduct.

- (iv) The mentioning of MAP1’s family and people MAP1 should be worried about during the interview was inappropriate, but this does not mean it was intended to pressure MAP1 to make admissions.

Officer PAM1 agreed during his private examination that although this was not his intent, that it could have been perceived as putting pressure on MAP1. The Commission finds that, even accepting it on this level, engaging in conduct that creates a perception of putting undue pressure on an accused to make admissions, is sufficient in the circumstances, to form a basis for serious misconduct.

- (v) In relation to the second interview where MAP1 demonstrated some confusion in his answers, it is not a matter for police to decide whether evidence is collected based on whether it is reliable, and it is the court’s role to examine the reliability of evidence.

The Commission rejects this submission. In the context of MAP1’s circumstances, the confusion shown went beyond a reliability issue. For example, when MAP1 admitted to stealing cars despite Officers PAM1 and PAM2 only referring to vehicles which had items stolen from within them, both officers should have been conscious of MAP1’s understanding of the questions being asked, not just the reliability of his answers.

⁷⁸ Private examination QWS at T55-56.

- (vi) At the time of the interviews, Officer PAM1 was a relatively junior and inexperienced police officer, and that where systemic issues of law, policy and training are the root cause, a finding of serious misconduct should not be made.

The Commission rejects this submission. Officer PAM1's experience, and the systemic issues within the NSW Police Force, have already been taken into account in making a finding of serious misconduct against him.

- (vii) The inaccuracies in Officer PAM1's statement are not fabrications, but merely consistent with 'inexperienced police officers keeping sub-optimal records during the investigation'. Further, it could not be said that Officer PAM1 was reckless because it cannot be shown that he was conscious of the inaccuracies and proceeded regardless.

The Commission rejects this submission, as Officer PAM1 conceded in his private examination that he was 'a bit sloppy when' writing his statement and that he 'didn't pay it the detail or attention that it required'.⁷⁹

- (viii) A finding that Officer PAM1 could be subject to serious disciplinary action would be unwarranted and unreasonable given his limited experience, poor preparation and systemic issues identified in Operation Mantus. The proper remedy would be training rather than termination, demotion or reduction in pay.

The Commission rejects this submission as the conduct of Officer PAM1 demonstrated clear impropriety in not allowing MAP1 to obtain legal advice during the first interview. The inability of an officer to respect such a basic request cannot be blamed on any other factor. Regardless of systemic issues, any officer with common sense and basic respect for fairness would have complied with MAP1's request to stop the interview for legal advice.

- (ix) The LECC Act places important restrictions upon findings that the Commission can make, and that the Commission cannot include a finding of officer misconduct unless the conduct is serious misconduct. In support, reference is made to the Second Reading Speech to the LECC Act. Ultimately it is submitted that a finding of serious misconduct is not in keeping with the intention and purpose of the LECC Act.

The Commission rejects this submission. It is important to construe the LECC Act, and the legislative provisions in the LECC Act relied upon to make a finding of serious misconduct are addressed below at paragraphs 6.4 to 6.15.

⁷⁹ Private examination QWS at T22.

5.3. It was submitted on behalf of Officer PAM2 that a finding of serious misconduct should not be made for the following reasons:

- (i) In relation to the impropriety displayed in the first interview, Judge Herbert did not put Officer PAM2 in the same category as Officer PAM1, and this was emphasised by her Honour's words "...or statements that the officers ought reasonably to have known to be false and this was likely to induce admissions".

The Commission does not accept that it was Judge Herbert's intention to distinguish Officer PAM2 from Officer PAM1 in this respect, as her Honour clearly offered no distinction when referring to their conduct. The words 'the officers ought reasonably to have known to be false and this was likely to induce admissions' offer no indication of an intention to distinguish between either officers.

- (ii) Officer PAM2's draft email to Ms Fard was composed the day after the events, being 29 May 2020, rather than the date printed on the email, being 22 July 2020, which is when the screen shot was taken.

The Commission accepts that the draft email was composed by Officer PAM2 but this does not alter any of the findings made.

- (iii) It would be unfair to categorise the conduct of Officer PAM2 on the same level as Officer PAM1, due to his inexperience and the complexity of the investigation into alleged offences by MAP1.

Officer PAM2's relative inexperience and the complexity of the investigation has already been taken into account, but it cannot excuse him fully of the serious misconduct he displayed in ignoring MAP1's multiple requests to stop the interview. Although he was second-in-charge of the investigation, he had equal and ample opportunity to stop the unfairness experienced by MAP1.

5.4. It was submitted on behalf of Officer PAM3 that a finding of serious misconduct should not be made for the following reasons:

- (i) The training provided by the NSWPF was "less than adequate" given the important protective functions of the role of the custody manager.

This has been taken into consideration by the Commission. The deficiency in training provides a background to the situation, but it does not provide a

complete explanation or justification for the shortcomings demonstrated by Officer PAM3.

- (ii) Officer PAM3 was not aware of MAP1's intellectual impairment and evidence of such only arose in the District Court.

Whilst this is true, the fact that MAP1 was a vulnerable person is a sufficient basis for finding that Officer PAM3 did not fulfil his statutory obligations as a custody manager and exercising common sense to protect MAP1's legal rights.

- (iii) Officer PAM3 was aware that MAP1 had been in custody several times prior to this incident and therefore was able to reasonably assume MAP1 had some knowledge of the processes.

The Commission rejects this submission. Every person is entitled to their rights under LEPRA and the LEPRA Regulations and the protection and enforcement of those rights cannot be altered by making assumptions based on a person's experience of being in police custody.

6. Affected Persons

- 6.1. In Appendix 1 to this Report the Commission sets out the provisions of s 133 of the LECC Act dealing with the contents of reports to Parliament. Subsections (2), (3) and (4) relate to an 'affected person'.
- 6.2. The Commission is of the opinion that Officers PAM1, PAM2 and PAM3 are affected persons within the meaning of s 133(3) of the LECC Act, being persons against whom, in the Commission's opinion, substantial allegations have been made in the course of the investigation.

Consideration of affected persons under s 133(2) LECC Act

- 6.3. Section 133(1) authorises the Commission to include in a s 132 report statements as to any findings, opinions and recommendations of the Commission together with statements of the Commission's reasons for any findings, opinions and recommendations.
- 6.4. As noted earlier in this Report (at paragraph 2.3), an important function for the Commission is to determine whether any police officer has engaged in 'serious misconduct' as defined in s 10 of the LECC Act. Relevantly, s 10 defines 'serious misconduct' as conduct of a police officer that could result in prosecution of the

officer for a serious offence or serious disciplinary action against the officer for a disciplinary infringement. 'Serious disciplinary action' is defined as action against any officer by terminating the employment, demoting or reducing the rank, classification or grade of the office or position held by the officer or reducing the remuneration payable to the officer.

- 6.5. For practical purposes, 'serious disciplinary action' for a police officer involves action to terminate the officer's employment under s 181D of the *Police Act 1990* or reviewable action under s 173 of the *Police Act 1990*. If the conduct could result only in non-reviewable action as defined in s 173(1) and Schedule 1 of the *Police Act 1990*, then the conduct would not constitute 'serious misconduct'.
- 6.6. Section 133(2) requires the Commission to include in a report, in respect of each affected person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given (relevantly) to the following:
- (a) obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence;
 - (b) the taking of action against the person for a specified disciplinary infringement;
 - (c) the taking of action including the making of an order under s 181D of the *Police Act 1990* against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the police officer; and
 - (d) the taking of reviewable action within the meaning of s 173 of the *Police Act 1990* against the person as a police officer.
- 6.7. Some observations should be made about the various steps contained in s 133(2).
- 6.8. Firstly, it is mandatory that the Commission give consideration to such measures in s 133(2) as may be relevant to the particular affected person.
- 6.9. Secondly, in considering whether to obtain advice of the DPP under s 133(2)(a), it is necessary for the Commission to disregard evidence given under objection by the person being considered for referral. The evidence of that person is not

admissible in any criminal proceedings against that person: ss 57, 74, 75 LECC Act. Evidence given under objection should not be provided to the DPP in the event of a s 133(2)(a) referral. However, the evidence given under objection by one person may be taken into account by the Commission in determining whether another person should be referred to the DPP for advice as to prosecution under s 133(2)(a).

- 6.10. Thirdly, in considering whether a s 133(2)(b) recommendation ought to be made, regard should be had to the definition of ‘disciplinary infringement’ in s 4(1) LECC Act:

disciplinary infringement includes any misconduct, irregularity, neglect of duty, breach of discipline or substantial breach of a code of conduct or other matter that constitutes or may constitute grounds for disciplinary action under any law.

- 6.11. The term ‘disciplinary infringement’ is used in ss 9 and 10 of the LECC Act. The Commissioner of Police may issue instructions to members of the NSW Police Force with respect to the management and control of the NSW Police Force. Instructions to members of the NSW Police Force under s 8(4) of the *Police Act 1990* may include instructions and guidelines with respect to the exercise of police officers of functions conferred under LEPRA. The terms ‘misconduct’, ‘neglect of duty’ and ‘breach of discipline’ in the definition of ‘disciplinary infringement’ are capable of picking up alleged breaches of Commissioner’s Instructions issued under the *Police Act 1990*.
- 6.12. Fourthly, the various steps in s 133(2) are not mutually exclusive. They are not expressed as alternatives although, as noted earlier, not all will be capable of application in a particular case. Clearly, s 133(2)(e) has no application in the case of a police officer.
- 6.13. Fifthly, the Commission is not bound to select one or other of the steps contained in s 133(2)(c) and (d). They are not expressed as alternatives. In some cases, a s 133(2)(c) recommendation for action under s 181D of the *Police Act 1990* may be the clear course of action to be recommended. In other cases, action under s 173 of the *Police Act 1990* may seem the clearly appropriate course to be recommended. There will undoubtedly be cases where factors may bear upon the exercise of judgment by the Commissioner of Police in the choice between s

181D or s 173 action, and those factors may not be fully known to the Commission. Reviewable action under s 173 of the *Police Act 1990* involves more serious disciplinary action falling short of dismissal from the NSW Police Force.

- 6.14. It is open to the Commission under s 133(2) to state that consideration be given to the taking of action under s 181D or s 173 with an opinion being expressed that one of these steps is supported more strongly than the other. The Commission's reasons given under s 133(1)(b) will explain the thought processes which have led to the s 133(2) steps being addressed in this way.
- 6.15. Against this background, it is appropriate to turn to the circumstances of the present investigation.

Section 133 consideration concerning Officer PAM1

- 6.16. A number of criticisms have been made of the conduct of Officer PAM1, namely that he put false information to MAP1 during both interviews, did not allow MAP1 to stop the interview so he could speak to a legal practitioner and applied undue pressure on MAP1 during the second interview. Additionally, it is noted that Officer PAM1 conceded that there were a number of inaccuracies in his statement. A Judge of the District Court found significant impropriety on his behalf which contributed to the exclusion of the records of interview under s 138 of the *Evidence Act 1995*.
- 6.17. The Commission notes the relevant experience of Officer PAM1 at the time of these events – he was not an experienced criminal investigator and had limited experience in conducting records of interviews. Officer PAM1 readily admitted his limited experience and poor preparation in this regard, and he acknowledged his conduct in interviewing MAP1 was less than satisfactory in a number of respects.⁸⁰
- 6.18. It is appropriate that his conduct attract significant criticism in this Report. In the same way as identified in the Operation Mantus Report, the Commission considers that the NSW Police Force has failed to provide guidance to police officers including Officer PAM1 regarding the interviewing of vulnerable persons whilst in police custody. The Commission is satisfied that Officer PAM1's conduct could result in serious disciplinary action against him by way of reviewable action

⁸⁰ Private examination QWS at T6, T52, T58-59 and T62.

under s 173 of the *Police Act 1990*. Accordingly, the Commission is satisfied that a finding of serious misconduct should be made with respect to Officer PAM1 with a recommendation that consideration be given to the taking of reviewable action against him under s 173 of the *Police Act 1990*.

- 6.19. Having regard to the evidence, the Commission is of the opinion that action should be taken against Officer PAM1 under s 133(2)(d) but not under s 133(2)(a), (b) or (c) of the LECC Act.

Section 133 consideration concerning Officer PAM2

- 6.20. Officer PAM2 failed to discharge his duty during both records of interview in that he failed to recognise MAP1's unmistakable requests to stop the first interview and MAP1's confusion in the second interview. The Commission stated earlier (at paragraph 3.82) that this conduct was unacceptable and constituted a blatant disregard for MAP1's right to silence. In addition, the Commission has made a further serious finding against Officer PAM2 that he disregarded Ms Fard's statement that MAP1 declined to be interviewed (see paragraph 3.85 above). His conduct contributed to the exclusion of the 2 interviews by the District Court in a judgment which was critical of his actions.
- 6.21. Officer PAM2 was also relatively inexperienced at the time of these events, and had insufficient training and support. It was clear that he was out of his depth in being involved as the second-in-charge of such an investigation.
- 6.22. It is appropriate that Officer PAM2's conduct attract significant criticism in this Report. Once again, the Commission notes that, as identified in the Operation Mantus Report, the NSW Police Force had failed to provide sufficient guidance to police officers including Officer PAM2 regarding the interviews of vulnerable persons whilst in police custody.
- 6.23. The Commission is satisfied that Officer PAM2's conduct could result in serious disciplinary action against him by way of reviewable action under s 173 of the *Police Act 1990*. Accordingly the Commission is satisfied that a finding of serious misconduct should be made with respect to Officer PAM2 with a recommendation that consideration be given to the taking of reviewable action against him under s 173 of the *Police Act 1990*.

- 6.24. Having regard to the evidence, the Commission is of the opinion that action should be taken against Officer PAM2 under s 133(2)(d) but not under s 133(2)(a), (b) or (c) of the LECC Act.

Section 133 consideration concerning Officer PAM3

- 6.25. Officer PAM3 did less than the bare minimum as the custody manager. He offered MAP1 a support person, facilitated his calls to obtain legal advice, and made notes in the custody management records. He fell short of using common sense in checking with MAP1 as to whether his rights were being properly exercised.
- 6.26. Moreover, Officer PAM3 failed to understand the important distinction between a legal practitioner giving legal advice and a person in custody giving instructions to their legal practitioner. In his private examination, it is clear that Officer PAM3 approached the matter as the provision of legal advice, rather than the giving of instructions which is the outcome of the advice. This failure led to an insufficient understanding of his obligations and duties required under Clause 29 of the LEPRA Regulation.
- 6.27. For reasons explained at paragraph 3.98 above, the conduct of Officer PAM3 fell far short of the proper exercise of his important duties as custody manager.
- 6.28. The Commission is satisfied that Officer PAM3's conduct could result in serious disciplinary action against him by way of reviewable action under s 173 of the *Police Act 1990*. Accordingly, the Commission is satisfied that a finding of serious misconduct should be made with respect to Officer PAM3 with a recommendation that consideration be given to the taking of reviewable action against him under s 173 of the *Police Act 1990*.
- 6.29. Having regard to the evidence, the Commission is of the opinion that action should be taken against Officer PAM3 under s 133(2)(d) but not under s 133(2)(a), (b) or (c) of the LECC Act.

7. Recommendations

The Commission's power to make recommendations

- 7.1. Section 133(1) of the LECC Act authorises the Commission to include in a s 132 report statements as to any findings, opinions and recommendations of the Commission together with statements of the Commission's reasons for any findings, opinions or recommendations.

Recommendations

- 7.2. Prior to April 2024, there were no procedures in place within the NSW Police Force setting out the steps a case officer must follow in reporting failed prosecutions in the NSW District Court and NSW Supreme Court. However the NSW Police Force had a failed prosecution process to be followed in the Local Court and Children's Court where police prosecutors appear to prosecute matters.
- 7.3. As noted earlier, as a result of issues raised in this investigation, the NSW Police Force moved to enter into a protocol with the NSW DPP in April 2024, which is intended to ensure that judicial criticism of police officers in certain situations, including conduct that results in a failed prosecution, will be reported by the NSW DPP to the NSW Police Force so that it may be dealt with under Part 8A of the *Police Act 1990*. This covers trials and other criminal proceedings conducted by the NSW DPP in the NSW District Court and NSW Supreme Court, as well as prosecutions conducted by the Office of the Director of Public Prosecutions in the Local Court and Children's Court. A copy of this protocol can be found at Appendix 3 of this Report.
- 7.4. Having taken into consideration the above developments, the Commission makes the following recommendations:
- 1) Training should be provided to all investigating officers and custody managers relating to the right to silence of a person in custody and the implications and consequences of not affording that right. The training should focus on identifying when a person in custody exercises that right and the need to immediately cease any interview or questioning once that right is exercised.

- 2) Training should be provided to all investigating officers and custody managers concerning the distinction between legal advice provided by a legal practitioner and instructions given by a person in custody to their legal representative, with it being open to a legal representative to convey those instructions to a police officer on behalf of a person in custody. This training should also clarify that it is the instructions given by the person in custody that should be recorded in the custody management records, and stress the importance of respecting those instructions. Custody managers should be trained to be more conscious of situations (and the duty of custody managers) where a person in custody has given instructions not to participate in an interview, and yet investigating officers are attempting to interview the person in custody whether formally or informally. It should be made clear that it is sufficient if the instructions are conveyed to the custody manager by the legal representative. If a police officer wishes to confirm those instructions with the person in custody, the enquiring officer should ask 'I understand from your legal representative that you do not wish to participate in a record of interview. Is that the case?' If the person in custody confirms that is the position, no further questioning should take place.
- 3) The Commissioner of Police should give consideration to the taking of reviewable action with respect to Officers PAM1, PAM2 and PAM3 under s 173 of the *Police Act 1990*.
- 4) If it has not already occurred, the Commissioner of Police should enter into a Protocol with the Commonwealth Director of Public Prosecutions to achieve the same purpose as the 'Protocol for the Notification of Judicial Criticism of NSW Police Officers' as entered into in 2024 with the NSW Director of Public Prosecutions.

8. Conclusion

- 8.1. Operation Pamir was an investigation into the conduct of Officers PAM1, PAM2 and PAM3 in respect of their involvement in the arrest, charging and custody of MAP1, who was a vulnerable person under the LEPRA Regulation.
- 8.2. The Commission obtained relevant documents from the NSW Police Force relating to the arrest and charging of MAP1, as well as the transcripts of

evidence and judgment by Judge Herbert in the District Court. The Commission also conducted private examinations of the 3 officers involved.

- 8.3. The Commission has made findings of serious misconduct against Officers PAM1, PAM2 and PAM3.
- 8.4. In a manner which echoes findings made in the Operation Mantus Report, the Commission identified that a lack of training and proper support within the NSW Police Force has contributed to the poor conduct of Officers PAM1, PAM2 and PAM3 that was displayed during the investigation under consideration in Operation Pamir. It is partly because of this that the Commission has confined its recommendations concerning each officer to the taking of reviewable action under s 173 of the *Police Act 1990*.
- 8.5. The obligation lies with the NSW Police Force to take all necessary action to guard against repetition of the conduct referred to in this Report and the Operation Mantus Report.
- 8.6. Accordingly the Commission makes the recommendations set out at paragraph 7.4 above.

Appendix 1 - The Commission's Statutory Functions

1. The *Law Enforcement Conduct Commission Act 2016* (the LECC Act) lists among the Commission's principal functions the detection and investigation of serious misconduct and serious maladministration: s 26.
2. Section 9 of the LECC Act defines 'police misconduct', 'administrative employee misconduct' and 'Crime Commission Officer misconduct':

9 Police misconduct, administrative employee misconduct and Crime Commission officer misconduct

(1) Definition — police misconduct For the purposes of this Act, **police misconduct** means any misconduct (by way of action or inaction) of a police officer —

- (a) whether or not it also involves participants who are not police officers, and
- (b) whether or not it occurs while the police officer is officially on duty, and
- (c) whether or not it occurred before the commencement of this subsection, and
- (d) whether or not it occurred outside the State or outside Australia.

(2) Definition — administrative employee misconduct For the purposes of this Act, **administrative employee misconduct** means any misconduct (by way of action or inaction) of an administrative employee —

- (a) whether or not it also involves participants who are not administrative employees, and
- (b) whether or not it occurs while the administrative employee is officially on duty, and
- (c) whether or not it occurred before the commencement of this subsection, and
- (d) whether or not it occurred outside the State or outside Australia.

(3) Definition — Crime Commission officer misconduct For the purposes of this Act, **Crime Commission officer misconduct** means any misconduct (by way of action or inaction) of a Crime Commission officer —

- (a) whether or not it also involves participants who are not Crime Commission officers, and
- (b) whether or not it occurs while the Crime Commission officer is officially on duty, and
- (c) whether or not it occurred before the commencement of this subsection, and
- (d) whether or not it occurred outside the State or outside Australia.

(4) Examples Police misconduct, administrative employee misconduct or Crime Commission officer misconduct can involve (but is not limited to) any of the following conduct by a police officer, administrative employee or Crime Commission officer respectively —

- (a) conduct of the officer or employee that constitutes a criminal offence,
- (b) conduct of the officer or employee that constitutes corrupt conduct,
- (c) conduct of the officer or employee that constitutes unlawful conduct (not being a criminal offence or corrupt conduct),
- (d) conduct of the officer or employee that constitutes a disciplinary infringement.

(5) Former police officers, administrative employees and Crime Commission officers Conduct may be dealt with, or continue to be dealt with, under this Act even though any police officer, administrative employee or Crime Commission officer involved is no longer a police officer, administrative employee or Crime Commission officer (but only in relation to conduct occurring while he or she was a police officer, administrative employee or Crime Commission officer). Accordingly, references in this Act to a police officer, administrative employee or Crime Commission officer extend, where appropriate, to include a former police officer, administrative employee and Crime Commission officer, respectively.

3. Section 10 of the LECC Act defines ‘serious misconduct’:

(1) For the purposes of this Act, **serious misconduct** means any one of the following:

- (a) conduct of a police officer, administrative employee or Crime Commission officer that could result in prosecution of the officer or employee for a serious offence or serious disciplinary action against the officer or employee for a disciplinary infringement,
- (b) a pattern of officer misconduct, officer maladministration or agency maladministration carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of the NSW Police Force or the Crime Commission,
- (c) corrupt conduct of a police officer, administrative employee or Crime Commission officer.

(2) In this section:

serious disciplinary action against an officer or employee means terminating the employment, demoting or reducing the rank, classification or grade of the office or position held by the officer or employee or reducing the remuneration payable to the officer or employee.

serious offence means a serious indictable offence and includes an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence.

4. ‘Officer maladministration’ and ‘agency maladministration’ are both defined in s 11 of the LECC Act. ‘Officer maladministration’ is defined in s 11(2) in these terms:

(2) Officer maladministration means any conduct (by way of action or inaction) of a police officer, administrative employee or Crime Commission officer that, although it is not unlawful (that is, does not constitute an offence or corrupt conduct):

- (a) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
 - (b) arises, wholly or in part, from improper motives, or
 - (c) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or
 - (d) arises, wholly or in part, from a mistake of law or fact, or
 - (e) is conduct of a kind for which reasons should have (but have not) been given.
5. The conduct of an officer or agency is defined as 'serious maladministration' if the conduct, though not unlawful, is conduct of a serious nature which is unreasonable, unjust, oppressive or improperly discriminatory in its effect or arises wholly or in part from improper motives: LECC Act, s 11(3).
 6. The Commission may hold an examination for the purpose of an investigation into conduct that it has decided is (or could be) serious misconduct or serious maladministration: s 61 (a).
 7. Section 29 provides the authority for the Commission to make findings and express opinions:
 - (1) The Commission may:
 - (a) make findings, and
 - (b) form opinions, on the basis of investigations by the Commission, police investigations or Crime Commission investigations, as to whether officer misconduct or officer maladministration or agency maladministration:
 - (i) has or may have occurred, or
 - (ii) is or may be occurring, or
 - (iii) is or may be about to occur, or
 - (c) is likely to occur, and
 - (d) form opinions as to:
 - (i) whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or

- (ii) whether the Commissioner of Police or Crime Commissioner should or should not give consideration to the taking of other action against particular persons, and
 - (e) make recommendations as to whether consideration should or should not be given to the taking of action under Part 9 of the *Police Act 1990* or under the *Crime Commission Act 2012* or other disciplinary action against, particular persons, and
 - (f) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter or opinions or the results of any such investigations.
- (2) Subsection (1) does not permit the Commission to form an opinion, on the basis of an investigation by the Commission of agency maladministration, that conduct of a particular person is officer maladministration unless the conduct concerned is (or could be) serious maladministration.
- (3) The Commission cannot find that a person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.
- (4) An opinion or finding that a person has engaged, is engaging or is about to engage in:
- (a) officer misconduct or serious misconduct or officer maladministration or serious maladministration (whether or not specified conduct), or
 - (b) specified conduct (being conduct that constitutes or involves or could constitute or involve officer misconduct or serious misconduct or officer maladministration or serious maladministration), and any recommendation concerning such a person is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.
- (5) Nothing in this section prevents or affects the exercise of any function by the Commission that the Commission considers appropriate for the purposes of or in the context of Division 2 of Part 9 of the *Police Act 1990*.

- (6) The Commission must not include in a report under Part 11 a finding or opinion that any conduct of a specified person is officer misconduct or officer maladministration unless the conduct is serious misconduct or serious maladministration.
 - (7) The Commission is not precluded by subsection (6) from including in any such report a finding or opinion about any conduct of a specified person that may be officer misconduct or officer maladministration if the statement as to the finding or opinion does not describe the conduct as officer misconduct or officer maladministration.
- 8. This report is made pursuant to Part 11 of the LECC Act. Section 132(1) provides that the Commission may prepare reports 'in relation to any matter that has been or is the subject of investigation under Part 6'.
- 9. Section 133 (Content of reports to Parliament) provides that:
 - (1) The Commission is authorised to include in a report under section 132:
 - (a) statements as to any of the findings, opinions and recommendations of the Commission, and
 - (b) statements as to the Commission's reasons for any of the Commission's findings, opinions and recommendations.
 - (2) The report must include, in respect of each affected person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:
 - (a) obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,
 - (b) the taking of action against the person for a specified disciplinary infringement,
 - (c) the taking of action (including the making of an order under section 181D of the Police Act 1990) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the police officer,

- (d) the taking of reviewable action within the meaning of section 173 of the Police Act 1990 against the person as a police officer,
- (e) the taking of action against the person as a Crime Commission officer or an administrative employee on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the Crime Commission officer or administrative employee.

Note. See section 29 (4) in relation to the Commission's opinion.

- (3) An "**affected person**" is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation (including examination) concerned.
- (4) Subsection (2) does not limit the kind of statement that a report can contain concerning any affected person and does not prevent a report from containing a statement described in that subsection in respect of any other person.

10. Section 146 provides:

146 Notification of proposed action on reports

- (1) As soon as practicable after the Commissioner of Police or Crime Commissioner receives a report under section 27, 32, 132, 134, 135 or 136 or a copy of the report is laid before a House of Parliament, the Commissioner of Police or Crime Commissioner, respectively, must notify the Commission of the nature of the action taken, or to be taken, as a result of the report.
- (2) If the Commission has provided a copy of the report to the Commissioner of Police or Crime Commissioner and the Commission is of the opinion —
 - (a) that the Commissioner of Police or Crime Commissioner has unreasonably delayed notifying the Commission of the nature of the action taken, or to be taken, as a result of the report, or
 - (b) that the nature of the action taken, or to be taken, as a result of the report is, in the circumstances of the case, unreasonable or inadequate, or
 - (c) that the Commissioner of Police or Crime Commissioner has unreasonably delayed taking action as a result of the report,

the Commission is to advise the Commissioner of Police or Crime Commissioner accordingly by notice in writing served on that Commissioner.

- (3) If the Commission and the Commissioner of Police do not, within 28 days, resolve any issue the subject of a notice under subsection (2), either or both of them may notify the Minister administering the Police Act 1990 that the issue is unresolved.
- (4) If the Commission and the Crime Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (2), either or both of them may notify the Minister administering the *Crime Commission Act 2012* that the issue is unresolved.
- (5) The issue may be the subject of a Commission's special report under section 138.

Appendix 2 – Extracts from other relevant legislation

Law Enforcement (Powers and Responsibilities) Act 2002

Part 9–Investigations and questioning

Division 3–Safeguards relating to persons under arrest and protected suspects

122 Custody manager to caution, and give summary of Part to, person under arrest or protected suspect

(cf *Crimes Act 1900*, s 356M)

- (1) As soon as practicable after a person who is detained under this Part (a "**detained person**") comes into custody at a police station or other place of detention or after a person becomes a protected suspect, the custody manager for the person must orally and in writing —
 - (a) caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence, and
 - (b) give the person a summary of the provisions of this Part in the form prescribed by the regulations.
- (2) The giving of a caution does not affect a requirement of any law that a person answer questions put by, or do things required by, a police officer.
- (3) After being given the information referred to in subsection (1) orally and in writing, the person is to be requested to sign an acknowledgment that the information has been so given.

123 Right to communicate with friend, relative, guardian or independent person and Australian legal practitioner

(cf *Crimes Act 1900*, s 356N)

- (1) Before any investigative procedure in which a detained person or protected suspect is to participate starts, the custody manager for the person must inform the person orally and in writing that he or she may —

- (a) communicate, or attempt to communicate, with a friend, relative, guardian or independent person —
 - (i) to inform that person of the detained person's or protected suspect's whereabouts, and
 - (ii) if the detained person or protected suspect wishes to do so, to ask the person communicated with to attend at the place where the person is being detained to enable the detained person or protected suspect to consult with the person communicated with, and
 - (b) communicate, or attempt to communicate, with an Australian legal practitioner of the person's choice and ask that Australian legal practitioner to do either or both of the following —
 - (i) attend at the place where the person is being detained to enable the person to consult with the Australian legal practitioner,
 - (ii) be present during any such investigative procedure.
- (2) If the person wishes to make any communication referred to in subsection (1), the custody manager must, as soon as practicable —
- (a) give the person reasonable facilities to enable the person to do so, and
 - (b) allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard.
- (3) The custody manager must defer for a reasonable period any investigative procedure in which the person is to participate —
- (a) to allow the person to make, or attempt to make, a communication referred to in subsection (1), and
 - (b) if the person has asked any person so communicated with to attend at the place where the person is being detained —
 - (i) to allow the person communicated with to arrive at that place, and
 - (ii) to allow the person to consult with the person communicated with at that place.
- (4) If the person has asked a friend, relative, guardian or independent person communicated with to attend at the place where the person is being detained,

the custody manager must allow the person to consult with the friend, relative, guardian or independent person in private and must provide reasonable facilities for that consultation.

- (5) If the person has asked an Australian legal practitioner communicated with to attend at the place where the person is being detained, the custody manager must —
 - (a) allow the person to consult with the Australian legal practitioner in private and must provide reasonable facilities for that consultation, and
 - (b) if the person has so requested, allow the Australian legal practitioner to be present during any such investigative procedure and to give advice to the person.
- (6) Anything said by the Australian legal practitioner during any such investigative procedure is to be recorded and form part of the formal record of the investigation.
- (7) An investigative procedure is not required to be deferred under subsection (3)(b)(i) for more than 2 hours to allow a friend, relative, guardian, independent person or Australian legal practitioner that the person has communicated with to arrive at the place where the person is being detained.
- (8) An investigative procedure is not required to be deferred to allow the person to consult with a friend, relative, guardian, independent person or Australian legal practitioner who does not arrive at the place where the person is being detained within 2 hours after the person communicated with the friend, relative, guardian, independent person or Australian legal practitioner. This does not affect the requirement to allow an Australian legal practitioner to be present during an investigative procedure and to give advice to the person.
- (9) The duties of a custody manager under this section owed to a detained person or protected suspect who is not an Australian citizen or a permanent Australian resident are in addition to the duties of the custody manager owed to the person under section 124.

- (10) After being informed orally and in writing of his or her rights under this section, the person is to be requested to sign an acknowledgment that he or she has been so informed.

125 Circumstances in which certain requirements need not be complied with

(cf *Crimes Act 1900*, s 356P)

- (1) A requirement imposed on a custody manager under section 123 relating to a friend, relative, guardian or independent person need not be complied with if the custody manager believes on reasonable grounds that doing so is likely to result in —
- (a) an accomplice of the detained person or protected suspect avoiding arrest, or
 - (b) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
 - (c) hindering the recovery of any person or property concerned in the offence under investigation, or
 - (d) bodily injury being caused to any other person.
- (2) Further, in the case of a requirement that relates to the deferral of an investigative procedure, a requirement imposed on a custody manager under section 123 relating to a friend, relative, guardian or independent person need not be complied with if the custody manager believes on reasonable grounds that the investigation is so urgent, having regard to the safety of other persons, that the investigative procedure should not be deferred.

126 Provision of information to friend, relative or guardian

(cf *Crimes Act 1900*, s 356Q)

- (1) The custody manager for a detained person or protected suspect must inform the person orally of any request for information as to the whereabouts of the person made by a person who claims to be a friend, relative or guardian of the detained person or protected suspect.

- (2) The custody manager must provide, or arrange for the provision of, that information to the person who made the request unless —
- (a) the detained person or protected suspect does not agree to that information being provided, or
 - (b) the custody manager believes on reasonable grounds that the person requesting the information is not a friend, relative or guardian of the detained person or protected suspect, or
 - (c) the custody manager believes on reasonable grounds that doing so is likely to result in —
 - (i) an accomplice of the detained person or protected suspect avoiding arrest, or
 - (ii) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
 - (iii) hindering the recovery of any person or property concerned in the offence under investigation, or
 - (iv) bodily injury being caused to any other person.

127 Provision of information to certain other persons

(cf *Crimes Act 1900*, s 356R)

- (1) The custody manager for a detained person or protected suspect must inform the person orally of any request for information as to the whereabouts of the person made by a person who claims to be —
- (a) an Australian legal practitioner representing the detained person or protected suspect, or
 - (b) in the case of a detained person or protected suspect who is not an Australian citizen or a permanent Australian resident, a consular official of the country of which the detained person or protected suspect is a citizen, or
 - (c) a person (other than a friend, relative or guardian of the detained person or protected suspect) who is in his or her professional capacity concerned

with the welfare of the detained person or protected suspect.

- (2) The custody manager must provide, or arrange for the provision of, that information to the person who made the request unless —
 - (a) the detained person or protected suspect does not agree to that information being provided, or
 - (b) the custody manager believes on reasonable grounds that the person requesting the information is not the person who he or she claims to be.

130 Right to reasonable refreshments and facilities

(cf *Crimes Act 1900*, s 356U)

- (1) The custody manager for a detained person or protected suspect must ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities.
- (2) The custody manager for a detained person or protected suspect must ensure that the person is provided with facilities to wash, shower or bathe and (if appropriate) to shave if —
 - (a) it is reasonably practicable to provide access to such facilities, and
 - (b) the custody manager is satisfied that the investigation will not be hindered by providing the person with such facilities.

131 Custody records to be maintained

(cf *Crimes Act 1900*, s 356V)

- (1) The custody manager for a detained person or protected suspect must open a custody record in the form prescribed by the regulations for the person.
- (2) The custody manager must record the following particulars in the custody record for the person —

- (a) the date and time —
 - (i) the person arrived at the police station or other place where the custody manager is located, and
 - (ii) the person came into the custody manager's custody,
 - (b) name and rank of the arresting officer and any accompanying officers,
 - (c) the grounds for the person's detention,
 - (d) details of any property taken from the person,
 - (e) if the person participates in any investigative procedure, the time the investigative procedure started and ended,
 - (f) details of any period of time that is not to be taken into account under section 117,
 - (g) if the person is denied any rights under this Part, the reason for the denial of those rights and the time when the person was denied those rights,
 - (h) the date and time of, and reason for, the transfer of the person to the custody of another police officer,
 - (i) details of any application for a detention warrant and the result of any such application,
 - (j) if a detention warrant is issued in respect of the person, the date and time a copy of the warrant was given to the person and the person was informed of the nature of the warrant and its effect,
 - (k) the date and time the person is released from detention,
 - (l) any other particulars prescribed by the regulations.
- (3) The custody manager is responsible for the accuracy and completeness of the custody record for the person and must ensure that the custody record (or a copy of it) accompanies the person if the person is transferred to another location for detention.

- (4) The recording of any matters referred to in this section must be made contemporaneously with the matter recorded in so far as it is practicable to do so.
- (5) As soon as practicable after the person is released or taken before a Magistrate or authorised officer or court, the custody manager must ensure that a copy of the person's custody record is given to the person.

Division 4—Regulations

132 Regulations

(cf *Crimes Act 1900*, s 356X)

The regulations may make provision for or with respect to the following —

- (a) guidelines to be observed by police officers regarding the exercise of functions conferred or imposed on police officers (including custody managers) by this Part,
- (b) police officers who may act as custody managers,
- (c) the keeping of records relating to persons who are detained under this Part, including the formal record of the conduct of investigative procedures in which such persons participate.

Law Enforcement (Powers and Responsibilities) Regulation 2016

Part 3 Investigations and questioning

Division 1 Custody managers

16 Appointment of custody managers for designated police stations and designated places of detention

The Commissioner of Police is to appoint one or more police officers (***appointed custody managers***) to act as custody managers at each designated police station and each designated place of detention.

21 Custody managers not prevented from exercising other functions

The provisions of this Division are not to be construed so as to prevent a police officer who is acting as the custody manager for a detained person or protected suspect from also exercising —

- (a) any function in connection with the identification of the person, or
- (b) any function under the provisions of Schedule 3 to the *Road Transport Act 2013* in relation to the person (such as carrying out a breath analysis of the person).

22 Guidelines for custody managers and other police officers

Custody managers and all other police officers must have regard to the guidelines set out in Schedule 2 in the exercise of their functions under Part 9 of the Act and this Part.

Division 2 Custody records

23 Meaning of “custody record”

In this Division —

custody record means the record required to be kept under section 131 of the Act.

24 Separate record for each detained person

- (1) A separate custody record must be opened, as soon as practicable, for each person who is detained under Part 9 of the Act.
- (2) A custody record may be in writing or in electronic form.
- (3) All entries in a custody record must include the time at which the entry is made.
- (4) The time of an event to which an entry in the custody record relates must also be included if the entry is not made within a reasonable time of the occurrence of the event.

25 Additional matters to be recorded in custody record

- (1) In addition to the matters specified in section 131 of the Act, the custody manager must record the following particulars in the custody record for a detained person —
 - (a) in the case of a person who has been arrested during the previous 48 hours —
 - (i) the offence or offences for which the person was arrested during that previous 48 hours, and
 - (ii) the investigation period that remains after reduction by so much of any earlier investigation period or periods as occurred within that previous 48 hours,
 - (b) if an application is made for a detention warrant, and the person declines to make representations (either personally, or by his or her legal representative) to the authorised officer, the fact that the person so declined,
 - (c) if a detention warrant is issued, a copy of the warrant or form of detention warrant, as the case may be,
 - (d) the time of any request to make a communication, and the time of any communication, under section 123 or 124 of the Act,
 - (e) the time of any request for information, or provision of information, pursuant to section 126 or 127 of the Act, together with the nature of such information,
 - (f) any request by the person, and any arrangement by a police officer (including under section 128 of the Act) for an interpreter, and the time that any such request or arrangement is made,
 - (g) any request by the person, and any arrangement by a police officer (including under section 129 of the Act) for medical treatment or medication, and the time at which the request or arrangement is made,
 - (h) any request by the person for refreshments, toilet facilities, washing, showering or bathing facilities,

- (i) if the person's clothing or personal effects are withheld, the reasons for withholding those items.
- (2) The custody manager must request the person to sign an acknowledgment as to the correctness of any entry made in the custody record in relation to the matters referred to in section 131(2)(d) of the Act and subclause (1)(b).

26 Inspection of custody record

- (1) A detained person must be permitted to inspect the custody record for the person on request unless the request is unreasonable or cannot reasonably be complied with.
- (2) While the detained person is in police custody, a legal representative of the detained person, a support person for the detained person and a consular official must each be permitted to inspect the custody record for the detained person as soon as practicable after the legal representative, support person or consular official arrives at the place of detention.
- (3) After the detained person has been released from police custody, the detained person's legal representative or any other person authorised by the detained person must be given a copy of the custody record if they give reasonable notice of their request to do so.

Note —

Section 131(5) of the Act also requires a copy of a detained person's custody record to be given to the person.

- (4) Despite subclauses (2) and (3), a support person or consular official may inspect the custody record only with the authorisation of the detained person.

Part 3- Investigations and questioning

Division 3- Vulnerable persons

28 Vulnerable persons

- (1) A reference in this Division to a vulnerable person is a reference to a person who falls within one or more of the following categories —

- (a) children,
- (b) persons who have impaired intellectual functioning,
- (c) persons who have impaired physical functioning,
- (d) persons who are Aboriginal persons or Torres Strait Islanders,
- (e) persons who are of non-English speaking background,

but does not include a person whom the custody manager reasonably believes is not a person falling within any of those categories.

Note —

If a person falls within more than one of the above categories, each provision of this Division relating to any category within which the person falls applies in relation to the person.

- (2) Pursuant to section 112(1) of the Act, the application of Part 9 of the Act to vulnerable persons is modified by this Division.

29 Custody manager to assist vulnerable person

- (1) The custody manager for a detained person or protected suspect who is a vulnerable person must, as far as practicable, assist the person in exercising the person's rights under Part 9 of the Act, including any right to make a telephone call to a legal practitioner, support person or other person.
- (2) In particular, the custody manager must ensure that the caution and summary required by section 122(1) of the Act is given to the person.

Note —

Section 122(1) of the Act provides that a custody manager for a person who is a detained person or protected suspect must, as soon as practicable after the person comes into custody or becomes a protected suspect, caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence. It also requires the manager to give the person a summary of the provisions of Part 9 of the Act.

30 Support person

A person may be a support person for a detained person or protected suspect who is a vulnerable person for the purposes of this Division only if the first-mentioned person is aged 18 years or over and is —

- (a) in the case of a detained person or protected suspect who is a child —
 - (i) a parent or guardian, or a person who has the lawful custody of the child, but not a parent of the child if the parent has neither guardianship nor custody of the child, or
 - (ii) a person who is responsible for the care of the child, or
 - (iii) an adult (other than a police officer) who has the consent of a person referred to in subparagraph (i) or (ii) to be the support person for the child, or
 - (iv) if the child is aged 14 years or over — an adult (other than a police officer) who has the consent of the child to be the support person for the child, or
 - (v) a legal practitioner of the child's own choosing, or
- (b) in the case of a detained person or protected suspect who is not a child —
 - (i) a guardian or any other person who is responsible for the care of the detained person or protected suspect, or
 - (ii) a relative, friend or any other person (other than a police officer) who has the consent of the detained person or protected suspect to be the support person for the detained person or protected suspect, or
 - (iii) if none of the persons mentioned in subparagraph (i) or (ii) are applicable or readily available — a person (other than a police officer) who has expertise in dealing with vulnerable persons of the category, or a category, to which the detained person or protected suspect belongs.

31 Support person may be present during investigative procedure

- (1) A detained person or protected suspect who is a vulnerable person is entitled to have a support person present during any investigative procedure in which the detained person or protected suspect is to participate.
- (2) However, a detained person or protected suspect who is a vulnerable person solely as a result of being a person of non-English speaking background is entitled to have a support person present only if an interpreter is not required to be arranged under section 128(1) of the Act solely because of section 128(3)(a) of the Act.
- (3) Before any such investigative procedure starts, the custody manager for the detained person or protected suspect must inform the person that the person is entitled to the presence of a support person during the investigative procedure.
- (4) If the detained person or protected suspect wishes to have a support person present, the custody manager must, as soon as practicable —
 - (a) give the detained person or protected suspect reasonable facilities to enable the person to arrange for a support person to be present, and
 - (b) allow the detained person or protected suspect to do so in circumstances in which, so far as practicable, the communication will not be overheard, and
 - (c) if the person has asked a friend, relative, guardian or independent person communicated with to attend at the place where the person is being detained — allow the person to consult with the friend, relative, guardian or independent person in accordance with section 123(4) of the Act.

Note —

Section 123(4) of the Act requires a custody manager to allow the person to consult with the friend, relative, guardian or independent person in private and must provide reasonable facilities for that consultation.

- (5) The custody manager must defer for a reasonable period any such investigative procedure until a support person is present unless the detained

person or protected suspect has expressly waived his or her right to have a support person present.

- (6) An investigative procedure is not required to be deferred under subclause (5) for more than 2 hours to allow a support person to arrive at the place of detention.
- (7) A custody manager is not required to comply with subclauses (3)–(5) if the custody manager believes on reasonable grounds that —
 - (a) doing so is likely to result in an accomplice of the detained person or protected suspect avoiding arrest, or
 - (b) doing so is likely to result in the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
 - (c) doing so is likely to result in hindering the recovery of any person or property concerned in the offence under investigation, or
 - (d) doing so is likely to result in bodily injury being caused to any other person, or
 - (e) the safety of other persons requires that the investigative procedure be carried out as a matter of urgency.

34 Role of support persons during interview

- (1) The custody manager for a detained person or protected suspect who is a vulnerable person is to inform any support person for the detained person or protected suspect that the support person is not restricted to acting merely as an observer during an interview of the detained person or protected suspect and may, among other things —
 - (a) assist and support the detained person or protected suspect, and
 - (b) observe whether or not the interview is being conducted properly and fairly, and
 - (c) identify communication problems with the detained person or protected suspect.

- (2) The custody manager is to give a copy of the summary referred to in section 122(1)(b) of the Act, to —
- (a) the support person, and
 - (b) any interpreter for the detained person or protected suspect who attends in person at the place of detention.
- (3) If the support person or the detained person's or protected suspect's legal representative is present during an interview of the detained person or protected suspect, the support person or legal representative is to be given an opportunity to read and sign any written interview record.
- (4) Any refusal by the support person or legal practitioner to sign a written interview record when given the opportunity to do so must itself be recorded.

36 Person responsible for welfare of certain detained persons or protected suspects to be contacted

- (1) If a detained person or protected suspect is a child or a person with impaired intellectual or physical functioning, the custody manager for the person must, as soon as practicable, attempt —
- (a) to ascertain the identity of the person responsible for the welfare of the detained person or protected suspect, and
 - (b) to contact the person so responsible and advise the person of the detained person's or protected suspect's whereabouts and the grounds for the detention.
- (2) If a detained person or protected suspect has impaired physical functioning, the custody manager must, as soon as practicable, attempt to determine any specific physical care needs of the person and, if reasonably practicable to do so, arrange for those needs to be provided for.

37 Legal and other assistance for Aboriginal persons or Torres Strait Islanders

- (1) If a detained person or protected suspect is an Aboriginal person or Torres Strait Islander, then, unless the custody manager for the person is aware that

the person has arranged for a legal practitioner to be present during questioning of the person, the custody manager must —

- (a) immediately inform the person that a representative of the Aboriginal Legal Service (NSW/ACT) Limited will be notified —
 - (i) that the person is being detained in respect of an offence, and
 - (ii) of the place at which the person is being detained, and
 - (b) notify such a representative accordingly.
- (2) If an Aboriginal person or Torres Strait Islander (the **detainee**) is detained under Part 16 of the Act in an authorised place of detention, the custody manager or other relevant detention officer must —
- (a) immediately inform the detainee that a representative of the Aboriginal Legal Service (NSW/ACT) Limited will be notified —
 - (i) that the detainee is being detained under Part 16 of the Act, and
 - (ii) of the place at which the detainee is being detained, and
 - (b) notify such a representative accordingly.

38 Cautions

- (1) If a detained person or protected suspect who is a vulnerable person is given a caution, the custody manager or other person giving the caution must take appropriate steps to ensure that the detained person or protected suspect understands the caution.
- (2) If the detained person or protected suspect is given a caution in the absence of a support person, the caution must be given again in the presence of a support person, if one attends during the person's detention.
- (3) A reference in this clause to the giving of a caution is a reference to the giving of a caution that the person does not have to say or do anything but that anything the person does say or do may be used in evidence.

Appendix 3 – ‘Protocol for the Notification of Judicial Criticism of NSW Police Officers’ between the Commissioner of Police and the NSW Director of Public Prosecutions (April 2024)

Protocol for the Notification of Judicial Criticism of NSW Police Officers

between

Office of the Director of Public Prosecutions and NSW Police

Background and purpose

1. The Office of the Director of Public Prosecutions (ODPP) and the NSW Police Force (NSWPF) each play a play critical role in the criminal justice system. The ODPP prosecutes serious crimes under NSW law on behalf of the community while the NSWPF investigates crime and obtains the evidence to support the prosecutions.
2. NSWPF strives to continually improve the services it provides to the community and the quality of the briefs of evidence it provides to the ODPP. In this context, the NSWPF seeks to be informed of judicial criticism in matters prosecuted by the ODPP.
3. This Protocol sets out the processes for this to occur.

Considerations

4. Upon request by NSWPF, the ODPP has agreed to a process for notifying the NSWPF of judicial criticism of police officers in matters that it prosecutes.
5. The NSWPF acknowledges that in providing this information the ODPP does not necessarily hold the same view of the matter as the judicial officer.
6. The ODPP has the discretion to decide which matters should be notified. As a guide, judicial criticism arising in the following situations has been identified as the type of criticism which should be the subject of a notification:
 - breaches of legislation conferring police powers;
 - conduct that results in the exclusion of evidence;
 - conduct that results in a failed prosecution;
 - unreasonable delays in the service of evidence which cause adverse consequences such as the vacation of a trial date;
 - conduct that is improper in a manner that contaminates, or has the potential to contaminate, evidence (including the collusion of police witnesses); and
 - misconduct of police officers.
7. Judicial criticism about trivial matters, or criticism which is considered unreasonable or unfair by the ODPP in all of the circumstances, and which is unlikely to lead to improvements in processes at NSWPF, will not generally be notified.
8. Importantly, this process is not to be (a) deemed a formal complaint by the ODPP under part 8A of the Police Act 1990, or (b) considered as a substitute for the ODPP making a complaint to the NSWPF about the conduct of a police officer or making a referral to the Law Enforcement Conduct Commission, where that is warranted.

Notifications under this Protocol will be dealt with by NSWPF under Part 8A of the *Police Act 1990*, as required.

Notification Process

9. Upon receiving information from the ODPP legal team about a notifiable criticism, the ODPP Managing Solicitor will provide information to their Deputy Solicitor who will decide if notification is warranted and if so, will notify the NSWPF via ppcrecords@police.nsw.gov.au using a template devised for that purpose.
10. The notification should be made in a timely manner at the finalisation of the matter. In exceptional circumstances, the ODPP may decide to make a notification prior to the finalisation of the matter, for example where to delay the notification would prevent the NSWPF taking necessary steps to address an important operational issue which has been identified by the court. This may arise for example where a trial is aborted or vacated and the finalisation of the matter will be significantly delayed as a result.
11. The notification will:
 - (a) identify the matter by H number, providing details of the type of proceeding, court venue, date and judicial officer;
 - (b) identify any police officers who were the subject of the criticism;
 - (c) set out the precise nature of the criticism, providing an extract of transcript where appropriate;
 - (d) if necessary to facilitate a clear understanding of the issues, provide a short explanation of the context of the proceedings, and any impact of the relevant conduct on the proceedings; and
 - (e) not include commentary or analysis of the judicial criticism.
12. The NSWPF may ask the ODPP for more information about the notification which the ODPP may provide, in its discretion, in appropriate circumstances. All correspondence with the ODPP is to go via the Deputy Solicitor.

Review

13. This Protocol will be reviewed 12 months after commencement.

Termination

14. The Protocol may be terminated at any time by either agency by notice given to:
ODPP: The Director for Public Prosecutions
NSWPF: General Counsel for NSWPF

Executed:

Natalie Marsic
General Counsel, NSW Police

Date: 2 April 2024

Sally Dowling SC
Director for Public Prosecutions

Date: 1 March 2024

