

Hearing: Operation Mantus

Before the Hon P Johnson SC, Chief Commissioner

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

On Monday, 13 March 2023 at 10.10am

1 THE CHIEF COMMISSIONER: This is a continuation of
2 a public hearing which commenced on 14 December 2022 by way
3 of a directions hearing. The scope and purpose of the
4 investigation was announced at that time and remains as
5 announced.

6
7 For the purpose of the public hearing this morning,
8 counsel assisting will shortly provide an update with
9 respect to the investigation, which is Operation Mantus.

10
11 Before asking counsel assisting for that update,
12 however, I will ask if there are any further applications
13 for leave by legal representatives to appear on behalf of
14 persons, conscious that a number of applications were
15 granted on the last occasion.

16
17 MR HARROWELL: Commissioner, my name is Harrowell.
18 I would seek leave to appear for (name withheld)

19
20 THE CHIEF COMMISSIONER: I should indicate that, as was
21 noted on the last occasion, for the purpose of the public
22 hearing, pseudonyms are to be used for all persons who will
23 be mentioned, both civilian and police officers. There is
24 a list.

25
26 MR HARROWELL: I have that, I apologise, Commissioner.

27
28 THE CHIEF COMMISSIONER: Perhaps if a copy of that list
29 could be handed to Mr Harrowell now.

30
31 MR HARROWELL: I have a copy.

32
33 THE CHIEF COMMISSIONER: Could you just nominate by
34 reference to that the officer?

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36 MR HARROWELL: Yes, I will. I appear for [MTS9].

37
38 THE CHIEF COMMISSIONER: Leave is granted for Mr Harrowell
39 to represent the officer who will be referred to in public
40 hearings as Officer [MTS9].

41
42 I note that a general non-publication order was made
43 on the last occasion to cover all names of persons for the
44 purpose of public hearings, and that non-publication order
45 extends to the named officer, who will be referred to in
46 public by the pseudonym Officer [MTS9], so leave is
47 granted, Mr Harrowell.

1
2 MR EURELL: Good morning, Commissioner, my name is Eurell.
3 I seek leave to appear for [MTS7].
4
5 THE CHIEF COMMISSIONER: Yes. Thank you, Mr Eurell.
6 I grant you leave to appear for the officer who will be
7 referred to in public as Officer [MTS7].
8
9 MR PATTERSON: May it please the Commission, my name is
10 Patterson and I seek leave to appear on behalf of
11 Officer [MTS8].
12
13 THE CHIEF COMMISSIONER: Yes, thank you, Mr Patterson.
14 Leave is granted for you to appear on behalf of
15 Officer [MTS8].
16
17 MR KERKYASHARIAN: Chief Commissioner, Kerkyasharian for
18 [YPM1]. I'm not sure whether I have already been granted
19 leave.
20
21 THE CHIEF COMMISSIONER: I think you can take it that you
22 have been but, for the record, it is helpful to have it
23 announced, though the earlier granted leave for Ms Lee
24 would encompass the representation for the young person,
25 and I note that you appear on behalf of the young person as
26 well. Thank you, Mr Kerkyasharian.
27
28 MR COFFEY: May it please, Chief Commissioner, I continue
29 to seek leave to appear for the Commissioner of Police but
30 also in respect of Officer [MTS6].
31
32 THE CHIEF COMMISSIONER: Yes.
33
34 MR COFFEY: Coffey is my name, I'm sorry.
35
36 THE CHIEF COMMISSIONER: Yes, thanks, Mr Coffey. Leave
37 is granted for Mr Coffey to appear on behalf of
38 Officer [MTS6].
39
40 Now, it could be there are some other applications at
41 a later time, but that completes it for the moment. At
42 this point, I will ask counsel assisting to provide an
43 update with respect to Operation Mantus. Thank you,
44 Mr Fernandez.
45
46 MR FERNANDEZ: Chief Commissioner, I provide this update
47 on the investigation.

1
2 Operation Mantus arises out of an incident which
3 occurred in September 2022 in northern New South Wales.
4 The incident involved a young person who sustained injuries
5 during the course of being apprehended by police, after
6 which he was arrested.

7
8 The young person was treated by ambulance and in
9 hospital for a short period. At the time, police were
10 conducting proactive policing activities and they were in
11 plain clothes. Police did not wear body-worn video at this
12 time.

13
14 After being treated in hospital, the young person was
15 taken to a police station. Police wished to interview him.
16 He contacted a solicitor. His solicitor advised police in
17 writing that the young person did not wish to be
18 interviewed. However, police did interview the young
19 person. An adult was present during the interview.

20
21 Some of the issues identified which arise from this
22 incident include what procedures were followed or were not
23 followed in conducting of the interview by police and the
24 young person's management in custody.

25
26 On 14 December last year, this Commission held
27 a directions hearing about this matter. At the directions
28 hearing, a number of issues were raised, but in particular,
29 the issue of whether the hearings would be in public, in
30 private, or a combination of both was addressed. The
31 Commission heard oral submissions and all parties were
32 given the opportunity at that directions hearing to be
33 heard on this issue.

34
35 At the conclusion of the directions hearing, the
36 proceedings were adjourned to a date to be fixed for
37 examinations to be held.

38
39 It was indicated that a decision on the use of public
40 and/or private examinations would be published and would be
41 made public in due course.

42
43 Parties were able to provide further submissions in
44 writing about that particular issue, and this is, in fact,
45 what occurred.

46
47 On 3 March 2023, the Commission delivered a decision

1 on this issue. This decision has been published and it is
2 available on the Law Enforcement Conduct Commission's
3 website.

4
5 Chief Commissioner, you considered a number of legal
6 matters, and in providing an update on the status of this
7 investigation, I refer to three parts in particular of your
8 decision.

9
10 I, firstly, refer to what you stated at paragraph 78
11 of your decision, which was this:

12
13 *Having regard to all the factors relevant*
14 *to the exercise of discretion under s 63*
15 *[of the] [Law Enforcement Conduct*
16 *Commission Act] --*

17
18 that being the Act referring to public and private
19 examinations --

20
21 *the Commission is satisfied that, in the*
22 *first instance, private examinations should*
23 *be held of witnesses on issues of fact.*
24 *I note that private examinations were held*
25 *with respect to Officers [MTS1], [MTS2],*
26 *[MTS3] and [MTS5] on 9 and 10 February*
27 *2023.*

28
29 As to where we are today, Chief Commissioner, you said this
30 at paragraph 79:

31
32 *Given the point that has been reached in*
33 *the investigation, it is proposed that all*
34 *representatives granted leave to appear for*
35 *interested persons (together with legal*
36 *representatives who may be granted leave to*
37 *appear) will be present at the private*
38 *examinations to be held as part of*
39 *Operation Mantus in the near future. This*
40 *step will assist the orderly progress of*
41 *the investigation including the*
42 *identification of evidence on systemic*
43 *issues which may be suitable for public*
44 *examination.*

45
46 As to the public examinations, you said this at
47 paragraph 80 of the decision:

1
2 *It is foreshadowed that the Commission will*
3 *hold public examinations with respect to*
4 *systemic issues after the private*
5 *examinations have been held.*
6

7 There will be public hearings and they will be held on
8 3 through to 6 April. At that time, this Commission will
9 hear evidence about systemic issues which have been
10 identified and which are exemplified in the incident which
11 took place.
12

13 In particular, it is anticipated that evidence will be
14 given at those public examinations about the use of
15 body-worn video and about interviewing young people,
16 particularly after young people have been given legal
17 advice that they do not wish to be interviewed by police.
18

19 It is anticipated that senior police and other
20 witnesses will give evidence at the public examinations
21 about those and other aspects relevant to this
22 investigation.
23

24 That completes the matters to be raised at this public
25 hearing. Subject to any other matters that might be raised
26 with the Commission, I seek an adjournment of the public
27 examinations to Monday, 3 April.
28

29 THE CHIEF COMMISSIONER: Yes. Thank you, Mr Fernandez.
30

31 Consistent with the decision, extracts from which have
32 been read by counsel assisting, the Commission will shortly
33 adjourn the public hearing until 3 April.
34

35 What will proceed this week is a private hearing, at
36 which all legal representatives present will be present,
37 where there will be a close examination of the factual
38 issues before a determination is made as to the extent of
39 the issues to be canvassed at the public hearing and the
40 witnesses to be called in that respect.
41

42 It is appropriate, given the need to change the
43 practical arrangements from a public hearing to a private
44 hearing, to adjourn for a period. There are a number of
45 steps that counsel assisting need to take in this period as
46 well.
47

1 I formally adjourn the public hearing, for public
2 examinations which will commence on Monday, 3 April 2023,
3 to proceed, it is expected, through to Thursday, 6 April
4 2023.

5
6 The Commission will resume - is 10 to 11 suitable?

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8 MR FERNANDEZ: It is, thank you, Chief Commissioner.

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10 THE CHIEF COMMISSIONER: The Commission will resume at
11 10 to 11 for the commencement of the private examination
12 phase which will proceed this week.

13
14 I will temporarily adjourn.

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16 **AT 10.22AM THE PUBLIC HEARING OF THE COMMISSION**
17 **WAS ADJOURNED ACCORDINGLY**

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