

Hearing: Operation Mantus

Before the Hon P Johnson SC, Chief Commissioner

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

On Friday, 26 May 2023 at 10.05am
(Day 7)

1 THE CHIEF COMMISSIONER: Yes, thank you, Mr Fernandez?

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3 MR FERNANDEZ: Chief Commissioner, there is no further
4 evidence to be taken at this stage in the public hearing.

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6 What I will shortly turn to is a proposed timetable
7 for submissions, but before I did so, Mr Coffey has
8 information to update the Commission.

9

10 THE CHIEF COMMISSIONER: Yes, thank you, Mr Coffey.

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12 MR COFFEY: Thank you, Chief Commissioner. Senior police
13 officers have met in relation to this matter. I had
14 instructions to let you know this yesterday so I just want
15 to be clear, it is not overnight as a result of the
16 conversation that you and I had yesterday. The reason
17 I didn't raise it was I needed to clarify some information
18 about whether I was going to hand you a draft document.
19 I unfortunately don't have that document.

20

21 The short point is senior police have met, they have
22 discussed this matter. There are a number of proposals
23 that are to be advanced and presented to the Commissioner's
24 executive team hopefully next week, if not the following
25 week. One of the reasons for the delay might just be about
26 the availability of some of the substantive executive,
27 rather than just presenting it to acting executive members.
28 That will then get corporate endorsement to be circulated
29 amongst the organisation for feedback and consultation, and
30 that takes into account the very important differences of
31 metropolitan, say, the Sydney Police Centre, versus
32 Blacktown, then versus, as you recognised yesterday,
33 regional versus rural, and then to come back.

34

35 It is anticipated that a draft of some proposals will
36 then be provided to the Commission, not specifically in
37 accordance with this timetable, hopefully even in advance
38 of that, to provide some opportunity for the Commission to
39 give some feedback because it is a very important matter
40 and the Commissioner of Police - although it hasn't
41 happened as fast as I think everyone in this room would
42 like, it is an important topic and it is moving forward.

43

44 THE CHIEF COMMISSIONER: Thank you for that indication,
45 Mr Coffey. As would have been clear from our discussion
46 yesterday, and indeed earlier discussions in April when the
47 evidence was being given, this is a matter of significance

1 and currency.
2

3 Having heard the evidence from the lawyers in the
4 field, from the ALS, from Legal Aid, and indeed the
5 statement from Ms Harper that was received yesterday, the
6 submission from Ms Harper, it struck the Commission as
7 being something that called for some prompt consideration
8 in the interests of everyone - in the interests of young
9 persons who have been in police custody and who may be
10 sought to be interviewed; the lawyers who give them advice
11 using the telephone advice system, which is of great
12 importance in this state as a practical way of assisting
13 persons in custody; and the police, because the police, in
14 the end, may end up doing things which become not just
15 controversial, but possibly have adverse consequences for
16 them and certainly for the police force as an institution,
17 and thus, the concern of the Commission in this inquiry,
18 which raises a wide range of issues, but this was one which
19 lent itself to a suggestion for some prompt action.
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21 So the Commission will appreciate being informed at
22 the earliest opportunity when action along the lines that
23 you have foreshadowed is taken.
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25 When you say it might be a little quicker than the
26 timetable, just for those who may not be aware of it, the
27 timetable that will be made shortly is: counsel
28 assisting's submissions by 23 June; submissions by all
29 parties by 7 July; submissions in reply by counsel
30 assisting by 14 July.
31

32 So just thinking of those dates, are you able to say
33 approximately when you think there may be something that
34 can be received by the Commission in documentary form about
35 this?
36

37 MR COFFEY: I'm hoping that early next week the briefing
38 will happen to the Commissioner's executive team and that
39 the draft that is to be circulated amongst the organisation
40 for consultation - that draft will be provided to the
41 Commission for, if I could call it, some preliminary
42 feedback, with a view that we still need to get internal
43 feedback, but starting to have more of a dialogue, open
44 conversation, rather than just waiting until, for example,
45 7 July.
46

47 I am hoping that - it might be a moving feast -

1 a number of different versions go back and forth and the
2 Commission might also provide feedback.

3
4 THE CHIEF COMMISSIONER: Yes.

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6 MR COFFEY: Whether you wish to make that restricted to
7 what's in your timetable, or hopefully the parties can have
8 a more open dialogue about that, I think that will be more
9 fruitful.

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11 THE CHIEF COMMISSIONER: I will shortly make the orders
12 I think as sought, unless there's any controversy about
13 them, but it will be on the basis that this is a separate
14 stream.

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16 MR COFFEY: Thank you.

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18 THE CHIEF COMMISSIONER: This is an issue which is
19 progressing, and if you would please ensure that the
20 Commission is kept aware through counsel assisting, the
21 solicitor assisting, and we will be very keen on seeing how
22 it progresses and playing a part in that, as I am sure
23 will, at some point, be Legal Aid NSW and the Aboriginal
24 Legal Service who would want to know what is happening in
25 this area, too.

26
27 MR COFFEY: Of course. I think that description, Chief
28 Commissioner, of "separate stream" is very helpful. Yes,
29 separate stream would be good, thank you.

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31 THE CHIEF COMMISSIONER: Perhaps I will just ask, is there
32 anything you want to say about that?

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34 MR FERNANDEZ: No, Commissioner, thank you.

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36 THE CHIEF COMMISSIONER: All right. The idea of
37 a separate stream for this issue - it won't be forgotten,
38 it will clearly be observed, but rather than picking dates
39 that may be randomly selected now, we've heard what has
40 been said by Mr Coffey and we can monitor the progress of
41 that issue.

42
43 MR FERNANDEZ: Yes, we can, Chief Commissioner.

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45 THE CHIEF COMMISSIONER: All right. Yes, thank you for
46 that, Mr Coffey, and please thank those who have instructed
47 you for that additional information which is very much in

1 the public interest.

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3 MR COFFEY: May it please.

4

5 MR FERNANDEZ: Chief Commissioner, I have circulated
6 a proposed timetable to those present here. I do not
7 understand there is any objection or amendment sought to
8 those orders, so I do ask the Commission to make those
9 orders.

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11 THE CHIEF COMMISSIONER: All right. The proposed
12 timetable accommodates not just submissions but an
13 opportunity for any party to make application for any
14 further evidentiary steps to be taken.

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16 MR FERNANDEZ: It does, Chief Commissioner.

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18 THE CHIEF COMMISSIONER: In taking that course, the
19 Commission has been conscious that there have been a number
20 of legal representatives present who haven't been here all
21 the time, and they don't need to be here all the time, but
22 who were wishing to check the transcript of yesterday, in
23 case there was anything further that they wished to
24 propose. The transcript of yesterday will be available, as
25 indeed will the transcript of today, to the lawyers who
26 have been granted leave and we will see if there's any
27 further evidentiary step that's proposed.

28

29 MR FERNANDEZ: Yes.

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31 THE CHIEF COMMISSIONER: Is there anything that anyone
32 appearing for a party granted leave wishes to say about the
33 proposed orders?

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35 MS LEE: No, Chief Commissioner, but can I just clarify
36 something about the exhibits that were tendered yesterday.
37 Are those also available to the public?

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39 THE CHIEF COMMISSIONER: The exhibits yesterday were -
40 just to remind everyone of them, these are MTS101 to
41 MTS105. The response from Chief Inspector Fishpool of
42 12 May --

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44 MS LEE: Sorry, just to home in on it, I'm particularly
45 interested in the use of force manual.

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47 THE CHIEF COMMISSIONER: Use of force, which is MTS105.

1 Is there any issue about the use of force manual being
2 publicly available?

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4 MR FERNANDEZ: I will be guided by Mr Coffey because he
5 did raise an issue about certain parts of it, and only
6 certain parts were referred to in open hearing. I will be
7 guided by Mr Coffey.

8

9 MR COFFEY: I apologise. I meant to correct that
10 yesterday. No application is made on behalf of the
11 Commissioner of Police in relation to that document.

12

13 THE CHIEF COMMISSIONER: I proceeded on the basis that
14 everything that was tendered on the public hearing would be
15 publicly available unless there was a specific order made
16 and so all the exhibits from yesterday I think are in that
17 category.

18

19 As I observed at the time we had a discussion about
20 the use of force training material, there is, I think,
21 a public interest in material of that type being known to
22 the community in this state, unless there's a particular
23 problem with a particular area, and I'm conscious that
24 there may be in some areas, for reasons associated with
25 police methodology and such, a particular concern. But the
26 use of force manual was expressed in quite general terms,
27 and to understand the oral evidence yesterday, the use of
28 force manual itself would need to be read and understood,
29 including the diagram which has been used to assist in
30 training. So that's a rather long answer to your question,
31 that that is a public exhibit and publicly available.

32

33 MS LEE: Thank you, Chief Commissioner.

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35 THE CHIEF COMMISSIONER: All right. Now, is the remaining
36 step in the public hearing, then, to make the proposed
37 orders?

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39 MR FERNANDEZ: Yes.

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41 THE CHIEF COMMISSIONER: I will proceed to do that now.
42 I will make a series of orders in accordance with the
43 document which has been prepared by counsel assisting and
44 is agreed to by those legal representatives who are
45 present, but I will read it out so that those in the
46 hearing room can understand its effect.

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1 So the orders made are as follows:

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3 1. Submissions by counsel assisting are to be
4 furnished to parties granted leave by 4pm on 23 June 2023.

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6 2. Submissions by all other parties are to be
7 furnished to the solicitor assisting the Commission by 4pm
8 on 7 July 2023.

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10 3. Submissions in reply by counsel assisting are to
11 be furnished to those granted leave to appear by 4pm on
12 14 July 2023.

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14 4. Any final submissions in reply by any party to
15 submissions by counsel assisting, or another party, are to
16 be furnished to the solicitor assisting the Commission and
17 to other parties by 4pm on 21 July 2023.

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19 5. Parties should prepare separate submissions on
20 proposed findings of fact, which should be marked
21 "Confidential", and, if such submissions are to be made, on
22 systemic issues.

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24 6. An updated pseudonym list is to be provided to all
25 parties by 4pm on 29 May 2023.

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27 7. An updated exhibit list will be provided to all
28 parties by 4pm on 29 May 2023.

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30 8. If any party wishes to make an application for any
31 further evidentiary steps by the Commission, this should be
32 made in writing to the solicitor assisting the Commission
33 by 4pm on 2 June 2023.

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35 9. If any party wishes to ask the Commission to
36 tender any additional evidence, this application should be
37 made in writing by 4pm on 2 June 2023.

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39 That covers the various options?

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41 MR FERNANDEZ: It does, Chief Commissioner.

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43 THE CHIEF COMMISSIONER: If, of course, there is any
44 unexpected issue which arises which may affect the capacity
45 of any party to comply with the timetable, then written
46 application could be made for any variation of the
47 timetable, although it is very much in the interests of the

1 completion of this investigation that the submissions come
2 in in a timely fashion to allow the Commission to concluded
3 matter.

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5 Was there anything that - yes, Ms Lee?

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7 MS LEE: Chief Commissioner, I just wanted to clarify, in
8 terms of evidentiary steps, does that include the
9 possibility of calling other witnesses?

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11 THE CHIEF COMMISSIONER: I think if that was the case,
12 yes, that's the sort of thing which is built into this. If
13 it was suggested there were other witnesses who should be
14 called, then it would be necessary for there to be
15 a written application explaining who it is and why, with
16 that to be done by 2 June.

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18 MS LEE: Thank you, Chief Commissioner.

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20 THE CHIEF COMMISSIONER: That's the understanding of --

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22 MR FERNANDEZ: That's so, Chief Commissioner.

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24 THE CHIEF COMMISSIONER: I think there was some
25 correspondence earlier in the week which did invite an
26 indication to that effect to be given by Wednesday of this
27 week, but there will be an opportunity for that question to
28 be considered. But obviously if such a suggestion was to
29 be made, the sooner we know the better.

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31 MR FERNANDEZ: Yes, Chief Commissioner.

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33 THE CHIEF COMMISSIONER: All right. Does that, then,
34 subject to any further listing, conclude the public
35 hearing?

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37 MR FERNANDEZ: It does, Chief Commissioner.

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39 THE CHIEF COMMISSIONER: All right. Yes, well, the public
40 hearing is concluded and any further step which the
41 Commission takes by way of public hearing, of course, would
42 involve not only notification to the parties but
43 notification to the media if there was to be such a further
44 hearing. So the Commission will adjourn.

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46 **AT 10.25AM THE COMMISSION WAS ADJOURNED ACCORDINGLY**
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