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NORTHERN TERRITORY OF AUSTRALIA

CORONERS COURT

A 51 of 2019

AN INQUEST INTO THE DEATH

OF KUMANJAYI WALKER

ON 9 NOVEMBER 2019

AT YUENDUMU POLICE STATION

JUDGE ARMITAGE, Coroner

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 31 OCTOBER 2022

(Continued from 28/10/2022)

Transcribed by:  
EPIQ

THE CORONER: Superintendent Nobbs, thanks for coming back, and you're on that same promise?

THE WITNESS: Good morning, your Honour, thank you.

MS MORREAU: Good morning, your Honour, I'll announce my appearance, Paula Morreau, appearing for the Brown family.

THE CORONER: Yes, thanks, Ms Morreau.

JODY NOBBS:

XXN BY MS MORREAU, on former oath:

MS MORREAU: Superintendent Nobbs, as before, if you could face me to answer the questions, it'll be a little bit more streamlined. I wanted to start with the written instructions provided in the emails that are attached to your statement. The one from Acting Sergeant McCormack and Sergeant Frost. Now, was that a common approach taken in the 10 or so times that you were involved in the IRT being deployed, that there'd be those sort of snap orders sent out by email?---I can't say that all of the deployments involved that, but certainly a common approach by me in terms of a snap order, yes.

All right. Now those emails, and particularly the snap order itself, did not indicate to the IRT members that this was a general support operation, as opposed to a high-risk deployment. It should have, shouldn't it, to make that clear to them, the level of risk that you had assessed in the activity?---I'd probably have to have a look at it again, but if it's not referenced, agree, it should have been referenced.

Thank you. Now the heading used in the emails is, "IRT call out, arrest of violent offender", and then his name. Terminology "violent offender" comes from flags that have come up in the police system, in relation to Kumanjayi Walker, that's correct isn't it?---Correct, yes.

And the purpose of those sort of flags and alerts, is to warn police to be on alert, or mentally prepared for the possibility of violence, correct?---Correct, yes.

Now violent of course, is a label, could encompass anything from a slap or a punch, up and to very serious weaponry being used as violence?---Correct, yes.

Now Kumanjayi's history, prior to the axe incident, involved one conviction for assault of police. Did you know that at the time?---I believe I did, yes.

Okay. And that was a kicking of the shins and a spit to the face in the Alice Springs Watch House in 2018?---I accept that that's the case, but I didn't know that – the intricacies.

Sure. And his – his violent history, if I can put that label on it, was by far more serious in relation to Rakeisha than it was in relation to anyone else?---My prevalence – the prevalence concerned for me at the time was predominantly Rakeisha and her well-being, yes.

Sure, but the point of these emails is to really alert police, as to risk, correct?---Correct, yes.

Would you not agree that – sorry, I think you would agree that the risk that Kumanjayi presented to officers was of a defensive kind; that is, an attempt to evade arrest through potentially an assault?---Correct, yes.

Would it not be clearer, unless inflammatory, to say that he may assault police to arrest – to evade arrest, rather than that he's a violent offender?---I'm pretty confident the order did articulate those propensity for violence, propensity to escape, may escape and there was some terminology within the order - - -

Yes?--- - - - articulating that fact, yes.

That's right. That's correct. But in terms of that heading, it's the first alert to the IRT members. Would you agree with me that it would be more accurate to use that terminology rather than the more inflammatory language of violent offender in - - -?---Correct, yes.

Now, there's other pieces of information that are missing from the snap order and I would like your commentary on whether it should have been included for future reference, okay?---Mm mm.

The first is the agreement that you're aware of that had been reached with Eddy and Lottie Robertson to delay the arrest until after the funeral. That should have been in the IRT snap order, wouldn't you agree?---I think it is in the snap order. Again, I would have to read it again.

The funeral is mentioned, but not the agreement?---Okay, agreed.

THE CORONER: How about we give you a copy. Do you have a copy?---I have a copy, your Honour.

You've got one?

So, it's annexure D (inaudible).

MS MORREAU: You will see, if you're looking at annexure D in the first paragraph, he's absconded primarily for the purpose of attending a family funeral in the afternoon on the 9th of the 11th '19. You're welcome to review that, but I'm suggesting that the agreement that had been reached is not mentioned in those emails?---Correct.

Would you agree that might have been useful - - -?---Certainly.

- - - for the IRT members to know that, that there was an agreement in place for that period of time?---Certainly, yes.

And also your knowledge about the funeral being something that may have extended past the afternoon might also have been useful information for the IRT to know?---Yeah, correct. But, at that time, there was no information to suggest that it was going to extend beyond the Saturday, in terms of the funeral that I interpret through my lens.

Yes, and in your lens though, you were aware that it was – that the formal component was in the afternoon, but that could extend into some activities that evening. Correct?---Correct. I acknowledge the cultural sorry business framework and obligations within that, yes.

All right. Something that would have been – should have been really in the written orders of use to the IRT?---Correct.

And finally, Kumanjaya's individual features, the fact that he had a hearing problem and some cognitive deficits, that sort of information would be critical for officers coming in to arrest him. Wouldn't you agree?---Presuming that was known, yes.

Yes. That sort of information would be very relevant to officers going into an arrest situation?---Correct. I will, I guess, highlight though that the nature of the order and as the name suggests, it's a snap order. It's a short, sharp, decisive set of instructions. We have – you know, a more comprehensive order framework there, your complete ops orders, they take a long time to craft and develop, but this was short, sharp, deliberate recognising the multitude of other functions and obligations that Sergeant Frost and myself had at that particular time; so imprecise.

Sure. The longer ops orders, had you used them before for the IRT deployments you've undertaken?---Certainly. Generally speaking, an IRT deployment need to be done in an hour-type framework. So no, generally, if we used IRT for something like a sports carnival or a force multiplier for some other planned event, yes. And that would be inherent within the order that relates to that particular event.

All right. So, circumstances like the present, these were the only written instructions provided to IRT members. Correct?---Correct, yes.

And so, therefore short and sharp, sure. But short and sharp with all relevant information for them to formulate their task?---Correct, yeah. Agree there's always provision to include more information and more information is always better than less.

Thank you. Now, moving to the information that you received about the situation outside the police station on the night, now you were primarily speaking to Sergeant Frost. Correct?---Correct.

But you may have spoken to other officers who answered her call – her phone when you had your 15 minutes call lens?---Correct.

Now, you were told that there were people outside fluctuating between 20 to 200?---Correct.

Do you know on what basis those numbers were reached? Do you remember that?---Sorry, I don't understand the question.

Do you remember the information as to how – 200 for instance, how that number was reached by the information you were given?---I'm not too sure. No, I didn't explore. I just simply accepted the assertion that there was anywhere between 50 and 200 and whether that was a product of what they could hear and an estimation. I'm not too sure.

Okay, thank you. Now, throughout the night, there were some rocks thrown on the roof of the police station?---Correct.

But no attempts to breach the station perimeter?---Not that I was aware of, but certainly, you know, you've got a reasonable apprehension as to possibility of that occurring.

It was easy to do?---Correct.

But it did not occur. There was no attempt to do it to your knowledge?---Not that I was aware, yes.

And no rocks were thrown at the windows in the front of the police station. Again, no, but a reasonable and high apprehension that that could reasonably occur.

Understood. I'm just talking about the actual facts that occurred. Now, Sergeant Frost was, of course, stressed and fatigued at this stage?---Correct.

Now, at one point, she expressed to you that she was afraid the police station would be set on fire with the police in it. Do you recall that?---Yes.

And as you pointed out to her at the time and you told police officers in your interview, there was zero evidence or information to suggest that?---Zero evidence to suggest that the police station could be set on fire, but again, reasonable apprehension that Sergeant Frost had and one that I supported and shared equally, notwithstanding I wasn't in Yuendumu at the time.

But you pointed out to her that that particular fear didn't have any basis in evidence or information at hand?---Correct.

At least in that sense, her fears were exaggerated, weren't they?---No.

And you reject the possibility that her – that any other observations were affected by stress, fatigue, anxiety on her part?---There's no doubt her observations could have been influenced by stress, fatigue and anxiety, but her observations, and that's a matter for her, but my assessment of her conduct at the time is that her observations were influenced by her lived experience and my acceptance of those observations were influenced by my lived experience in terms of the issues and the challenges within Yuendumu Community.

Now, I'll come to that in a moment. But did you – have you seen the livestream videos that were taken by a member of the community from outside the police station?---I've seen snippets on the media.

I see?---Very few.

I want to play a couple of short snippets to you and get your comment in answer to my questions.

Exhibit 4-20, please. If it can be started at the beginning.

Now, this is a livestream from 8:31 pm on the evening.

If we can play up to about a minute for this one.

DVD PLAYED

MS MORREAU: All right, if it can be halted there. That's a video that was posted at 8:31 pm that evening?---Thank you.

The next one I'm going to take you to is exhibit 4-21 posted at 9:21, so about just under an hour later that evening and if this can be stopped about 30 seconds in.

DVD PLAYED

MS MOREAU: All right, if it can be halted there. That's a video that was posted 8:31 pm that evening?---Thank you.

The next one I am going to take you to is Exhibit 4-21 posted at 9:21, so about - just under an hour later. And if this can be stopped at about 30 seconds in?

DVD PLAYED

MS MOREAU: All right, if that could be stopped now? And then the final video, exhibit 4-22 and that was posted at 10:16 pm so about - just under an hour after that one. And again, about 30 seconds.

DVD PLAYED

MS MOREAU: All right, that can be stopped there, thank you. Thanks. Now,

I appreciate that these are moments in time captured by those videos but the circumstances depicted there, can you comment whether that is consistent or inconsistent with what you were told about the situation outside that evening?  
---In the ways you've alluded to, they are a very narrow moment in time but certainly consistent - sorry - inconsistent with the notion that there was unrest and I certainly can't say in terms of numbers. It does look like - and there's a narrow pan, but it does look like there's a lot of numbers there, but those moments in time are acknowledged to be relatively calm.

Thank you. Now, you gave evidence about public safety being the primary or priority in your decision-making around these critical decisions that you made at this time?  
---Yes.

And of course I'm talking about the decisions firstly to evacuate the police, secondly not to tell the family of Kumanjayi's passing and then not to send an officer out to the crowd to engage with them with Derek Williams, okay?---Yes.

They are the critical decisions I am focussing on at the moment. Now, effectively, when you say "public safety" as you did in your evidence, you are referring really, to the safety of police and police property aren't you?---Definitely not, no.

Why not?---There's - - -

What other safeties - safety issues were you referring to and to - - -?---The whole community, that encompasses the police, it encompasses stakeholders, it encompasses those that are there peacefully, genuinely wanting to know what's going on inside the police station and the conditions of Kumanjayi Walker, includes those that could potentially involve in unrest associated with it. My oath is to protect the community - not the police officers within the police station but certainly recognise that the police officers are equally a priority.

Now, you're talking about impacts on the community that would be consequent upon individuals breaching the police station, aren't you?---Breach the police station, a violent disorder - a multitude of things.

And the risk for the community is from police isn't it? Police - police weapons responding to some sort of unrest, isn't it?---I'm sorry, say that - sorry?

The risk for community members is a risk posed by police defensively, in relation to any unrest around the police station, isn't it?---Arising from the conduct of the community, correct.

Yes?---Although - and there is potential collateral issues, that is inherent within that but yes.

Now, the basis for your belief that - particularly police interests but I accept your evidence about the broader implications and the way we have just discussed it, but the factors you referred to when you were under questions from Dr Dwyer, so your

belief that their safety was in jeopardy was the fact of the critical incident firstly. Secondly, the information you were receiving on the ground. Thirdly, your lived experience in the NT and fourthly, your knowledge of the Yuendumu community in particular. Are they the four factors that led to your belief about the safety risk? ---Correct, but I guess so far within these proceedings we've explored a number of them but we haven't necessarily explored one with experience that underpins my perception of risk.

I was just about to ask you that, Superintendent. What do you mean by your, "lived experience within the Northern Territory" in forming our belief?---Well, I guess, as I indicated in my evidence-in-chief that 24 years in the police service, of that 18 years within Central Australia, predominantly operations, passion for remote policing, so I generally gravitate towards remote policing or within Central Australia - -

I'm sorry, I was just hoping you could focus on the lived experience that informed your assessment of the safety risks?---Yes, sorry.

I realise you have plenty of lived experience?---Whatever it is I - brevity is not my strong point but I'm trying to provide the context necessary to get to the lived experience but, you know, over the years I've seen a secular increase in dysfunction and harm and crime, it continues to go up despite all of our collective best interests - sorry - best efforts to resolve those issues. At the present time we find ourselves on a per capita basis by far the unenviable highest representation of crime in Australia by well and truly far, so in terms of manslaughter rates we're four times the highest - the next highest - not the national average but the next highest jurisdiction we are three and-a-half times the next jurisdiction for incidents involving injuries, we're three times assaults, we're two times unlawful entries, we're four times public order. I've seen - unfortunately - and I'm talking about the Warlpiri people now, a multitude of civil unrest matters, 2010 the stabbing of two people, the tragic death of one, buildings burned, cars burned, the evacuation and the displacement of Warlpiri people for months into South Australia, 2014 the Ti Tree riots, 200 people involved in that, again predicated on Warlpiri people going into a place they weren't welcome resulting in issues there. 2018 the Ali Curung riots, again one dead tragically, houses burned, cars burned, people displaced - 500 people involved there, so my experience as it relates to the Warlpiri people in respect to these unrests and each of these matters have an element of perceived injustice, a grievance, mob mentality and results in substantial harm, damage, destruction and people displaced, so - and each of them have elements of there's likely to have been an articulation of an issue and then a quickly deterioration into chaos and mob mentality rule. So I guess that's my lived experience as to how quick these things turn and that was, I guess, what I feared at that point in time as it relates to Yuendumu as well.

Now, you started off with general crime statistics being high in the Northern Territory. Of course those sorts of crimes exist both in white communities and Aboriginal communities, correct?---Certainly, but certainly are disproportionate in terms of NT and at a guess, as I've just talked about, how disproportionately high NT is. I haven't talked about how disproportionately high then again Yuendumu is relative to that

crime data, so what I've highlighted is an under-representation as it relates to Yuendumu.

Obviously crimes are committed - and I will move to the riot kind of events that you've spoken about in a moment but just speaking - speaking about general crime levels, these are individual acts of violence that you're referring to and the statistics in relation to individual acts of violence, correct?---Individual acts of violence that sometimes have multiple participants within that instance.

But it's not common that a white community is labelled with the effects of an individual act of violence, is it? It's a different approach that's taken when you're speaking about levels of violence in Aboriginal communities?---Sorry, I don't understand the basis of that question.

You talked - if - you're talking about a domestic violence, manslaughter or murder but as an individual crime that is not then taken to reflect the community that that person came from?---No, it's - - -

In the white community?---No, it's not, I guess, but I operate in the remote Indigenous communities and that's my frame of reference.

So you're approaching that differently, given that experience, is that what you're saying?---Well, I'm approaching it in the only way that I know how to approach it because that's the environment in which I operate, but a strong element within the over-representation of particularly offences against persons, are in the perceptions or – or the justification through the pay-back lens, so that's – yeah that's the frame of reference in which I have, based on where I operate.

Now in terms of the riots, you use the term “riot.” You use that when there's what, more than a 100 people involved? Like a fairly large scale activity?---I guess there's no hard and fast. It's definition, but - - -

But the way you use it is a - - - ?---I get - - -

- - - large scale activity?---Correct. A civil unrest. The participants exceed, you know, the police capacity to respond. There's a common purpose. There's a large scale of destruction, and injury.

And the – I don't want to go into the details of all of those events, but were there any that were triggered by police conduct?---No not - - -

You mention 2010, 2014 and 2018?---I think the 2014, the Ti Tree one, there may have been some potential elements of some questions that police potentially, by some participants, may have re-inflamed the situation by fuelling - - -

But generally, you're talking about intra-Aboriginal group - - - ?---Correct.

- - - unrest and rioting, and burning and violence, in that context?---Correct, so the agreed - - -

Correct?---Party have a view that the transgressor is a rival Indigenous clan or community.

And that relates to all three of those ones that you specifically mentioned?---Correct, yes.

You mentioned, in your evidence, that you were concerned that culturally, there might be an attempted retribution towards police, is that your view?---Correct, yes.

Are you referring to a concept of pay-back are you?---Correct, yes.

But that concept, as a cultural concept, is necessarily one that is limited to the Aboriginal community, not relations between Aboriginal members and white - - - ?---Well I disagree strongly in that regard. Again, my lived experience is quite substantial in terms of witnessing pay-back. And I've seen pay-back quite powerfully undertaken, but I see that very rarely. I could see that I guess on one hand in terms of instances where pay-back is about controlling and – sorry, pay-back's about resolving a grievance. It's about bringing domestic discipline and finalisation of a grievance within a community. I've seen it very powerfully in some communities, but by and large, I've seen the substantial corruption of pay-back through pay-back for pay-back for pay-back - - -

But we're speaking of - - - ?---Consumption of liquor, weapons made and adapted, you know, baseball bats with barb wire. Each of these riots that I talk about, have the justification, in the minds of the participants that this is a necessary requirement for pay-back purposes.

But again, we're talking about community against community, aren't we? Aboriginal communities?---We are talking about a focus on a transgressor. That's what we're talking about.

But with – but your experience is within the Aboriginal community itself?---We are, but again, the transgressor in most cases, is another Indigenous person.

Yes?---That doesn't necessarily say, so if I talk about a 2015 matter at another community. And I won't talk – say the community, other than to say it was within here. The police seized some liquor. The offender in relation to that matter, drives his vehicle through the police station front door, to inflict pay-back, because of the issues around the seizure of liquor. I've got multiple cases where police are told so the – a fatality in 2019, in another remote community, where police had to be taken out of that community through threats to kill. And the necessity to provide pay-back. So it's about the transgressor, it's not about the individual. I acknowledge there's an over-representation of the transgressor being another Indigenous person, but it's not limited to that. Particularly when I talk about that broadly speaking, pay-back is corrupted too frequently.

But the instances you just mentioned then, were again, individuals enacting some sort of revenge?---They're cultural people, talking about pay-back.

But individuals, not necessarily the entire community acting in that way?---Well the fatality in that community was large scale community members attending the police station, indicating that they needed to provide pay-back to the police officers involved in the fatal motor vehicle accident. So that was extended beyond the - - -

That's in a different community to Yuendumu?---Correct, it's in a community within Central Australia.

I see. And did – was there actually pay-back effected?---No, it's against a de-escalation, a plan put in place, engagement, consultation, over various days, to de-escalate the situation, and take the passion out of the situation and – and then respond to it accordingly.

Are you aware of any data or research available to you, as the IMT leader responding to this critical incident, how to effectively engage with a community like Yuendumu, in that sequelae?---Data sorry?

Data, research, training, about how to engage with the community, post a critical incident like this?---Well look there's no script, clearly. I don't think you can write a script, but you know, the – most cases it's – we build - - -

Operational experience?---Experience.

Okay. Now the rouse that you set up with Sergeant Frost, did it extend to your knowledge to persons at the Alice Springs Hospital, being told to answer community calls to the effect that he was being brought there?---No. Not that I'm aware of no. And I – I think I would have been aware of it, so the answer is no.

Now you knew obviously Eddy Robertson before this evening, quite well?---Correct, yes.

You also knew Kumanjayi Nelson, who's sadly passed since, and you knew other Elders from Yuendumu Community at the time?---Yes.

And an alternative way to responding to the crowd outside of the police station, I'm suggesting to you, is one of engaging with Elders, and engaging with family. That is an alternative is isn't?---It's certainly an alternative, but it's – it wasn't a safe alternative on the night, and it's an alternative that whilst I considered, I didn't enact, due to safety concerns.

You made the conscious decision not to engage with Elders, correct? Yes so - - - ?---Very conscious, yes.

- - - and – and also not to encourage, or order Sergeant Frost to do so?---Correct.

Now by 11.50 pm, Eddy Robertson contacts police. The notes from the scribe indicate that that – that the communication that came from Forward Commander Zhang to mislead, and lie, in fact, to Mr Robertson, came from you?---Yes - - -

That direction?---Certainly something that wasn't comfortable with. Not comfortable for Senior Sergeant Zhang, certainly not comfortable as it relates to the community. Something that I acknowledge has caused considerable harm, and distress, and hurt, but a very conscious decision nonetheless, yes.

And of course, we're talking about a time at – approaching midnight, on this event, that that phone call was made?---Yes.

I think it's noted in the notes that it's calm at the station at that point, yes?---Yes.

There'd been no breach of the station perimeter or – or attacks on the station, at that point?---Correct, and I maintain that reality was a product of two things. And two things only, at the time. And they were - - -

How can you say that, from where you were sitting? Sorry, I'll let you finish your answer first?---Well firstly, it's – they were the two things. And that was the involvement of Derek Williams, and the other Elders at the front of the police station. And then the second done was the deliberate and calculated deception, the so-called rouse, were the two factors that, in my mind, did not result in a catastrophic outcome. And – and I think it's quite clear that in the – whilst there was a – an immediate escalation around the conveyance from the airstrip, the evidence will show – well it's quite clear to me, from my recollection at the – within the IMT, that there was a fairly substantial and quick, rapid abatement of issues, in my mind, predicated on the basis that there was a broad belief and understanding that Kumanjaya Walker was still being treated in a – in a condition, and being transferred to Alice Springs. So those are the two factors in my mind that changed the – the dynamics.

Thank you. That's your personal view. That's not been the result of any risk assessment post event, or anything of a formal kind?---No.

THE CORONER: It's a personal view, based on experience.

MS MORREAU: Yes?---It's the personal view that informed my organic and ongoing risk assessment.

And as you say, you thought things had abated somewhat because of the rouse, correct?---And coupled with the leadership demonstrated by Derek Williams and the Elders.

All right. Obviously the leadership demonstrated by Derek Williams and the Elders is something that I put to you, could have been used to greater effect by proactive engagement by police with them?---I acknowledge your question. I disagree.

Now you I think, in your earlier evidence, spoke about the – the cultural sensitivities around these issues of telling family about the passing of their loved one, or permitting family to see him before he passed. But it's – I think you've just said, it's not just that. It's really plain old humanity, isn't it?---Yes.

And these decisions cause – caused, anger and offence, but also personal distress and psychological harm to members of his family?---Cause and I – and acknowledge that still probably causing it. Not a doubt in my mind. Something that doesn't sit comfortably with me. As I said in my evidence-in-chief, I'm a different police officer because of this night. But I still maintain, in my position, based on my experience, necessary at the time.

And harm, you're referring to, not just for his family, but also the broader community that were there that evening?---Correct, the – the bi-product is the harm, erosion of trust, something that's going to probably put us back a substantial way. But again, well in – I say, well intended on my part to try to keep a community that I care about, safe.

Final question. Would you concede the reasonable possibility, that at least by midnight, when Mr Robertson makes that phone call, that he – that he could have, and indeed should have, been told the truth?---No. My position from – from the moment, was that until I established sufficient capability within community, and the arrival of the TRG at 1.30 am, and not only the arrival, but then we had opportunity to robustly develop a communication strategy. And that was considered. And there was a risk overlay around that communication strategy, that the communication wasn't appropriate, based on my fear that the dynamics could change within the community at a moment. And the rouse, as uncomfortable as it is, was what in my mind, had resulted in the abatement of the community within – at the police station.

Thank you, Superintendent.

Thank you, your Honour?---Thank you.

THE CORONER: Ms O'Neill.

MS O'NEILL: Thank you, your Honour.

XXN BY MS O'NEILL:

MS O'NEILL: Superintendent, my name's O'Neill, I appear for the Walker, Lane and Robertson families?---Good morning.

I want to take you to some evidence that you gave last time you were before the court on 27 September.

I might just have that bought up, transcript pages 1096 to 1097.

THE CORONER: Just while we're waiting for that, no one has been interested in this idea, but I'm going to float it again with you, Superintendent, to see if you think there's anything to it. Whether when you're putting together your teams in Darwin and Alice Springs, there should have been a trained negotiator or communicator, as part of those teams, to perhaps – I'm not saying what they would have said to anybody, and whether they would have – whether there would have been any decision other than, let's call it the rouse. But do you think it would have been helpful for someone to have been communicating with the family in a strategic way, rather than to simply effectively keeping them at bay?---It's a hard question to answer, your Honour. I recall reflecting back on my engagement with Sergeant Frost and Senior Sergeant Zhang. And whilst it probably wasn't helpful to them, I remember trying to convey the need to avoid the conversation, to avoid the inevitable lie that would fall out that conversation. My position was quite firm in terms of when will we engage, and whether that was a negotiator, or the members at the time, I wanted to limit the interaction, based on what Derek was telling us, based on my understanding of the risk, because I didn't want to lie. I knew we had to lie, but I don't know, I don't think I've answered your question, your Honour, but - - -

Do you think inevitably someone was going to have to do that, it might have been better, if it was someone specifically trained in negotiations/communication, and managing information, would that have assisted? And two, would it have been fairer on the members, if it was someone who had those specific skills, and removed the personal engagements that those people had on the ground?---A 100 percent, your Honour. The – our negotiators are exceptional. They're trained. So yes, at the very least, they should have been put on standby as yet another specialist support capability that would assist. And they could have assisted in that regard, so yes.

And when the communications actually occurred, we've seen difficulties around that. For example, the wrong name was used. There wasn't actually – whilst there was – we've been told by Sergeant Zhang, there was a plan in relation to sort of safety and timing, and that it would be light, and who would be there, and a car a 100 metres away, and things like that. There had – there wasn't good planning about who would actually deliver the message, and how – what words would be used?---So not only was the plan, or the absence of a plan, it's, I guess, it was the absence of the structure. So the (inaudible) as we were going through at the time, on the ICCS Plus structure, to the Incident Patrol Structure, has you know, your 10 functional elements within that structure. And one of those is around public information and communication. The notion that Sergeant Zhang had to be all to everyone, is not necessarily the case. What there should have been within the structure, was a span of control, and an allocation of a particular role to the people. So it could have been Sergeant Frost, you're my public information and communication officer. Go away and develop a robust communication plan, what that looks like, what is the script, what is our if then considerations around, if we're asked this question, what are we going to say then? If we're asked this question, what do we say then? It doesn't necessarily fall on the forward commander. In fact, it probably shouldn't fall on the forward commander to undertake that function. It could have, but not necessarily the case, given he's the senior person there. So it's the structure that they didn't have in place.

So I mean, for example, so someone on the ground would actually deliver the message, but someone with those skills would be (inaudible) development and the script (inaudible)?---Correct. And – and it would have potentially been better delivered by someone that had respect, connection, mutual – sorry, mutual respect, connection, relationship. So – and then you wouldn't have the embarrassing situation where you call someone the wrong name. It's – that's - - -

All right, so I just want you to think about whether or not there should be a negotiator or communicator on that kind of team - - - ?---Agreed.

- - - behind the scenes.

Sorry.

MS O'NEILL: Not at all, your Honour.

Superintendent, I think you should have now there in front of you, page 1096 of the transcript?---Yes, thank you.

If I can just take you right to the bottom of that page. The last question. It starts, "In terms of what you were being told there." Just refresh your memory by reading that, and over the page, to the end of the third question?---Yes. Yes.

So, Superintendent, my impression of what you've said there is that common sense of a cultural sensitivity might dictate the delay of an arrest but in the strict terms of police powers, such an arrest cannot be delayed. Is that correct?---So not just police powers. Statutory provision, so correct, yes.

So I just want to take you to that if I may? The first provision, which is the s 38.2 of the Arrest General Order?---Yes.

At 17-5 of your Honour's brief, it says the use of - if Bec has it there I might get it brought up? 38.2, your Honour.

So 38.2 you can see that there, Superintendent?---Yes, thank you.

It says, "Members should be mindful that the arrest warrant directs members of the police force to arrest and bring the person before the court to answer to the information and to be further dealt with according to law". Do you see that? ---Correct, yes.

"The provision to delay taking the person before the court afforded by s 137(2) of the *Police Administration Act* is not available in these circumstances." Do you see that? ---Yes.

Now, 137(2) of the *Police Administration Act* relates to when police are permitted to detain a person after arrest, before taking them to court for the purpose of interviewing and investigation, that kind of thing?---Correct, yes.

So this s 38.2 does not limit a police officer's discretion in relation to an arrest before they are arrested. Do you agree with that?---(No audible response).

And just so you're aware of where I am going with this, Superintendent, I am going to take you to another provision in relation to the general order regarding warrants. Perhaps we will go there now, so that you have all the information?---Perhaps, yes, thank you.

This is exhibit 9 in the inquest at 9.1. So you see there at 9.1 it states, "A member must not withhold execution of any warrant because of personal consideration for a defendant". Do you see that?---Correct, yes.

And so going back to the one I showed you before, 38.2, it doesn't relate to delay before an arrest. 9.1 is the provision that speaks of delay before an arrest, similar to a warrant. Do you agree with that?---I accept that's what it says, yes.

And it speaks - 9.1 there speaks of "Not withholding execution of a warrant because of personal consideration for a defendant." Correct?---Correct, yes.

Now, police regularly make decisions about the most appropriate time to arrest someone, correct?---Correct, yes.

Including where you're arresting somebody pursuant to a warrant, correct?---Correct, yes.

"In making those decisions, the execution of the warrant may be withheld because of considerations such as the safety of police??"---Correct, yes.

"The efficient allocation of resources"?---Yes.

"The interests of the broader community"?---Yes.

For example, police sometimes wait until the circuit court comes to community before arresting people on warrants within that community so that they can be dealt with on the day of court?---Maybe.

Another example is delaying a non-urgent arrest to take into account cultural matters such as sorry business?---Arrest or a warrant? Execution of a warrant?

For arrest pursuant to a warrant, yes?---And that's clearly what we have done in this case here. It's whilst the explicit instruction within the general order says you won't, we did.

Well, I'd suggest sorry business is not simply personal consideration for a defendant. It also includes respect for a community and will assist police to ensure a peaceful arrest?---Agreed, but I don't think the absence of those terms in there denote that we should be allowed to - for considerations of the community, equally acknowledge that we do daily around safety, all of the factors you've outlined, yes.

I'd suggest to you that the decision you made to delay the arrest of Kumanjayi Walker until after the funeral was quite a proper exercise of police discretion in relation what you - your powers in respect of arrest. Do you agree with that? ---Agreed, it was appropriate and necessary in the circumstances, based on cultural sensitivities but I don't accept that it was supported by the framework in - the rigid framework in which we operate in.

Do you think it would assist police if this was clarified in the Arrest or Warrants General Order?---Certainly it would. It's influenced again by the statutory provisions also.

Well there's nothing in the statute that speaks about the timing of an arrest. Can you take that from me?---If you say so. I thought 32 - sorry, 42 and 43 of the Sentencing Act could be interpreted as such but if you say it doesn't I accept that.

I will come back to that. But I suggest to you that the *Police Administration Act* certainly does not include anything in it to suggest any view police have to take into account in terms of determining when to arrest?---Agreed, that's not in the Police Administration Act, yes.

Do you think it would also assist to list matters that a Police Officer might take into account in determining when to affect an arrest?---Yes, certainly.

And that could occur either within the legislation or within the general orders? ---Probably not in the legislation but certainly within the general orders. Anything that gives a police office a ready reckoner or an aide memoire as an assistance in decision-making it is beneficial, yes.

And those matters would include the timing of any cultural events, within a community?---Most certainly.

I will just move to a - sorry, I might - I've just had the opportunity to look at ss 42 and 43. My understanding of those sections is that they relate to the circumstances in which a police officer may arrest for breach of a suspended sentence either with or without a warrant. I can't locate anything in those sections that deal with the timing of the execution of a warrant or arrest in accordance with those sections. Is it your understanding that there is something in there?---It's been a while since I've read it. I thought it - whether explicitly directed or reasonably inferred that there's no delay provision within that. I could be wrong. It's been a long time since I've read it.

I will move to another topic if I may, Superintendent?---Thank you. I guess the only thing I'll say on the last topic though is the knowledge and cultural sensitivities, the

balance I applied, as I indicated in my evidence-in-chief, was the safety of Rakeisha, so I've put an arbitrary line in the sand as to what I was willing to accept and I wasn't willing to accept the ongoing situation that saw Kumanjayi Walker at large, notwithstanding I accepted that there would be a continuation of cultural matters post the funeral proper.

You had no power to arrest Kumanjayi Walker though, in relation to anything that had occurred in relation to Rakeisha, correct?---No, but that was my primary concern.

If he had completed his term at CAAAPU and been released into the community as was relatively imminent, there would have been no basis to arrest him in relation to any concern in respect of Rakeisha?---And I'm not talking about an arrest, but an arrest would facilitate a mitigation of risk to Rakeisha at that given time.

The incident, the most recent incident in relation to Rakeisha was 12 months before November 2019?---So, in terms of Rakeisha, so as I indicated in my evidence-in-chief, I was the chair of the Yuendumu family safety framework. Kumanjayi Walker and Rakeisha were probably one of the most challenging participants within that framework. I had a really good understanding as to some of the complexities of their relationship. So, from 2016 to 2019, I think there had been six assaults on Rakeisha.

Yes, but Superintendent, the most recent assault before November 2019 was 12 months prior. Do you agree with that?---Yes. But I also acknowledge within the family safety framework, the broad perception or acceptance that there was a substantial under-reporting by Rakeisha as a very vulnerable and difficult victim. So, that's where my fear predominately was in terms of risk to Rakeisha going forward.

THE CORONER: And is there understood to be a greater risk as I understand it to be someone is released back into the community directly after a (inaudible)?---That's the most critical time, your Honour. What we generally have the benefit of within the family safety framework is having an appreciation as to a release date and then putting the mitigations in place to reduce the risk. Kumanjayi Walker's absconding didn't allow us to put the mitigations in place. And the mitigations were challenging at the best of times with Rakeisha, so I had a real fear around Rakeisha and equally with my organic risk assessment, whilst I was aware of the cultural sensitivities, I also have in the back of my mind constantly, it's quite possible I would be sitting in this very court explaining why I – being asked the question, Superintendent Nobbs, but you didn't have discretion, yet you allowed a known repeat domestic violence offender to be at large when you didn't have a safety plan in place for a known repeat domestic violence victim. So, it's a balance and I drew arbitrary line in the sand and that was the reason behind it.

Superintendent, you spoke about substantial under-reporting, to your knowledge, there had been reporting by Rakeisha as at November 2019 of any acts of violence towards her since Kumanjayi Walker's absconsion from CAAAPU. Correct?---Correct, yes.

And indeed, you were aware that on 6 November, she was in the company of Kumanjayi Walker. Correct?---Which was always the case, yes.

And you were aware that her actions on 6 November were more consistent with her being protective of Kumanjayi. Correct?---Correct, yes.

And so, this idea that you were somehow concerned for harm to Rakeisha in those circumstances, was speculative at best. Correct?---Well, domestic violence is very insidious. There is a multitude of factors. So, the notion that Rakeisha was in company with Kumanjayi Walker, therefore she was safe and not in any risk, I think is not an appropriate assertion to make.

She hadn't asked for any AVO, had she?---She had – so, in her – from 2016 to 2019, there were three in place. So, one - - -

I'm not asking you about that period of time.

THE CORONER: I'm interested though.

MS MORREAU: I beg your Honour's pardon.

THE CORONER: No, no, you've raised an issue and I would like to understand that.

MS MORREAU: Quite?---So, there were three in place; one in 2016, that was a no-harm order that I think went through it's 12 months' duration or timeframe. And in 2017, there was another one that lasted no more than three months. That was an application, I think brought about by police for a no-harm – sorry, no-contact whilst in intoxicated order, but that was ultimately withdrawn in court, I think at the insistence of Rakeisha and her family, I suspect. And then there was another one that was the subject of an ongoing application at the time of Kumanjayi's passing that obviously didn't – and that's my memory of the three that we had. So, I think there was a live matter at the time.

But it wasn't at Rakeisha's insistence, was it?---None of them were at Rakeisha's insistence. They were brought about recognising the vulnerability of Rakeisha. You know, there was a multitude of things that we tried to do, paying for her and her family to go to Adelaide which – it was challenging.

Just to be clear, my clients aren't suggesting that that wasn't a fair consideration. But in terms of the arrest of Kumanjayi Walker in November 2019, your arrest powers had nothing to do with the safety of Rakeisha, did they?---No, but the arbitrary line in the sand I drew was influenced by Rakeisha.

And in fact, it's possible, isn't it, that had Kumanjayi been peacefully arrested, that he could have applied for bail. Correct?---Most certainly, yes. And that happens all the time where applications are put to a magistrate around cultural matters and it's not

uncommon for the courts to say acknowledge the cultural significance, bail denied.

But the other is true as well?---Correct, yes.

I'll move now, if I may, to another topic. The inquest has received evidence that Julie Frost sent Derek Williams a text on the afternoon of 9 November at about 2 pm indicating, "Hey Derek, getting IRT out here tonight. Can you give me a quick buzz at some stage before or after funeral, so I can put a plan in action." That's at annexure JF4. Were you aware of that text?---No.]

After a decision was made to deploy the IRT, did you discuss with Sergeant Frost that she should inform Derek or the Elders in the Yuendumu community, somebody like Eddy Robertson, of the deployment of the IRT?---Sorry, can you ask that question again? I apologise.

No, of course. After a decision was made to deploy the IRT, did you discuss with Sergeant Frost that she should inform Derek or the Elders of the Yuendumu community of the deployment of the IRT?---No.

In his statement, Derek says that he received the text, but that he did not know what the IRT was. Does that surprise you?---No.

He also stated that, even after discussing it with Sergeant Frost, he didn't know Sergeant Frost was bringing in people who were going to be all kitted up with heavy stuff. Does that surprise you?---Yes.]

And is that because you would have expected, if Sergeant Frost spoke with Derek about it, that she would give him a sense of what the IRT was going to look like in the Yuendumu community?---Yes, for one. And two, notwithstanding Derek was a senior Aboriginal police officer operating in Yuendumu, my understanding – well, certainly the expectation would be that – whilst he may not know what the abbreviation IRT stands for, but he would have an appreciation of what a surge deployment into a location looks like, because it occurs with regularity.

Were you aware before now that Derek didn't have an understanding as of the afternoon of 9 November about what an IRT would look like in the Yuendumu community?---If you're say that, I accept that, yes.

Well, I'm not really asking you to accept a proposition that I'm putting to you, I'm asking you whether you had been aware before today that Derek did not understand what an IRT was going to look like in Yuendumu?---No. No knowledge of this until you asked me the questions then.

Do you accept that having unknown police in the community conducting high visibility patrols during sorry business would have been something that would be concerning to the Yuendumu community?---No, no, not at all.

What about if they were armed with longarm rifles?---Certainly, yes. The high – high

visibility deployment is, it's – there's a multitude of options with that. It's drive around the community. It's go to the basketball court and play basketball with the kids. It's a whole multitude of things. It's – the notion that it's an overt punitive expectation, is – is not the case. The high visibility is provide some reassurance to the community that the concerns they've got around break and enters, and things such as that, is – we've got some plans in place to protect – to – to respond to that.

But you've seen the videos now of what occurred?---Correct, yes – seen snippets of what I've been provided within these proceedings. I don't think – I don't know if I've seen them all.

And the footage that was depicted in those videos, wasn't of police officers going into the Yuendumu Community, playing basketball, and providing reassurance, correct?---And I've indicated already that I don't accept how and why that occurred.

But it that's what was contemplated, in your words, an overt punitive approach, if that's what was contemplated, you would expect the community to be consulted, correct?---No. If – if we got to the stage there we had to provide some sort of high tactical action with the elements inherent within a tactical action. No we wouldn't communicate with the community in that regard. That would - - -

And in - - - ?---Generally be a – a stealth situation, or some elements of – yeah, no.

So in neither situation, not in your situation when you contemplated a high visibility patrol, nor in the situation that we saw in the videos, in neither situation would you consult with the Yuendumu Community about the deployment of those officers, correct?---No. I accept you could – potentially could in the first situation. But I don't think it's – it's completely necessary.

You gave some evidence on the last occasion, about the importance of connectedness and communication with Aboriginal communities. Do you recall giving that evidence?---Yes.

This is at 1082 to 1083 of the transcript. You spoke there about the importance of local decision-making and community buy in, because that's where the answers are, you said?---Agreed.

You spoke about decision-making being local, and that Aboriginal people should be empowered, to make these decisions about their own communities?---Agreed.

And did you hold those views in November 2019?---I've always hold the – sorry, I won't always held those views, but certainly have held those views for a very, very long time, in terms of the importance of communities in any decision-making, and as the genuine need to resolve some of the particular challenges within Indigenous communities.

And yet when the issues of additional unknown police in the community during sorry business arose, you say that it's perfectly fine not to discuss that with the local

community?---I'm certainly not saying it's fine. I said to you that I accept that we could have. To me, was a situation where we had a couple of additional police – the intent was, a couple of additional police vehicles, driving around the community, interacting with the community, trying to build about some reassurance. So you know, there was cultural matters going on at the time. The notion that we would go and say, hey just to let you know, we're going to have some additional police coming in, I – I don't know whether it was particularly necessary. But it could have occurred.

I mean in terms of getting local buy in, and that being where the answers are, if police are regularly undertaking those kinds of communications with the community, that's going to build trust isn't it?---Correct, yes.

And it is going to be something that leads to community buy in, do you agree with that?---Yes.

In your interview with investigators on 29 November 2019, you told them that you viewed the community as challenging, correct?---Agreed, yes.

As lacking in resilience, correct?---As a broad proposition, yes. So I agree I said that. I don't know whether that was a fair characterisation, but certainly said at the time, and agree, that some elements of the community lack resilience, yes.

But it's not a fair characterisation, is it?---Sorry?

It's not a fair characterisation?---Not if you're talking about the community, in totality, no.

And you also described the community as pretty pathetic, do you - - - ?---No I - - -

- - - remember saying that?---No. That's – I acknowledge that I was going to get that question. I didn't say "pathetic." I note that it says within the transcript "pathetic." What I said was "Apathy." And I invite you so listen to the audio, if necessary.

So you describe the community as apathetic, is that right?---Apathetic, correct, yes. And again, probably not a fair characterisation of a community that I know is powerful, and a community that I have a good relationship with. But in the construct of a many, many hour interview, that was the term I used at the time. And it's probably not a fair characterisation of the community in totality. But it was apathetic, not a pathetic community, there was an error.

Regardless of whether it was pathetic or - - -

DR DWYER: No, I object, your Honour. It is "apathetic", is, in my respectful submission. And we will fix the transcript. And I accept that that's our error. I should have ensured that that transcript was fixed beforehand, because there's a significant difference. So I apologise to my friend, but I'll take that on board.

THE CORONER: Do you know what page of the transcript it is - - -

DR DWYER: I'm just finding that now, your Honour.

MS O'NEILL: Your Honour, it's on page 51 of the interview.

I just want to get some clarity though around the word "apathetic" if I may - - - ?---Mm mm.

- - - by that you mean not caring, don't you?---Yes, that's the term I used at the time, yes.

And it's – it's not fair is it, to suggest that the Yuendumu Community, doesn't care?---Hulus bolus, no it's not. Not fair at all. And – and now that that's on the record, that doesn't reflect my attitudes towards the Yuendumu Community in totality. And if there's any distress, or upset caused by that comment, I sincerely apologise. It wasn't my intention, but – to label the community more broadly, but certainly I acknowledge that there's still, as in any community, some – some broad based apathy in a challenging community, yes.

And were' speaking in any community, including any non-Indigenous community - - - ?---Agreed.

- - - you agree with that don't you?---Yes.

Now do you regret making those comments about the Yuendumu Community?---I regret not providing greater context to those comments. And I regret that they could reasonably be perceived as reflective, or indicative of my attitudes towards the whole community. And that's clearly not the case. So a short answer is yes.

Did you understand your – sorry. Did you hold a view, as at 9 November 2019, that this community was challenging, lacking resilience and apathetic?---I held the view, and I still hold the view today, that it's a challenging community. Many, many challenges within that community. I still – I held at the time, and still hold today, that there are some resilience challenges there. And – and I say that the characterisation though that it's an apathetic community is probably unjust, and certainly not warranted. I didn't hold the view at the time, notwithstanding that's what I said. But challenging, certainly. And resilience, certainly.

And is it possible your failure to consult with the Yuendumu Community, or to direct the consultation with the Yuendumu Community on 9 November, in relation to the deployment of the IRT, was informed by those particular views that you held about it?---I'd say no.

When you made the decision to deploy the IRT, you were off-duty, correct?---Correct, yes.

And you weren't in front of a computer. You didn't have a notebook, those kinds of things that you usually would have, if you were on-duty, correct?---Correct, yes.

And so when we speak with you and ask you questions about things that could be included in emails, other – other tasks that could have been undertaken, like consulting with the community, in part, are those failures, and I don't use that word suggesting they're personal failures, but things that could have been done better. Are they in part due to the fact that these decisions were being made by an off-duty police officer?---Fair question. Had I been at work, would have I been more in the game, I don't – sorry – actually I withdraw that. Not referring to this as a game, and it's far from it, and I apologise for that statement. But had I had my mind more in what was required, I don't know. I don't think so. I think I'm professional enough, and I've got experience enough that irrespective of where I'm at, I recognise the risk. I recognise the challenges. And I make sure that I, as best I can, mitigate those risks and challenges by putting a robust plan in place. I would say "No" but I think it's a very fair question.

Superintendent, while we are on that topic, I just want to take you back to annexure D to your statement which is the email from Sergeant Frost setting you the operation order and I know my colleague, Ms Moreau has taken you to that already. You, in response to some questions by her, said this was a snap order?---Correct, yes.

That it was short and sharp so you accepted more information would always be better. Now, this email to you was sent at 4.49 pm, correct?---Correct, yes.

At that point in time were you aware that the IRT team were driving from Alice Springs to Yuendumu?---I didn't know - I reasonably assumed they would have been, yes, whether they were in transit or there, I'm pretty confident at the time I would've expected that they were still in transit, yes.

And you know the distance from Alice Springs to Yuendumu?---Correct, yes, I've driven it many times.

It's a number of hours, correct?---Correct, yes.

And so the IRT - well, the dog handler arrives at 5:30, do you recall that?---Yes.

Two members arrive at about 6:30?---I accept that's the case.

And two other members arrive just before 7 pm, correct?---Yes.

So this email at the time it was sent - 4:49 pm, you've got at least 40 minutes before the dog handler arrives, correct?---Yes.

An hour and 40 minutes before the next two IRT members arrive?---I don't know the exact times, but if you say I accept that this is the case, yes.

And over two hours before everyone descends there, correct?---Correct, yes.

And in your mind, this team was being deployed at 11 pm that night, correct?  
---Correct, yes.

So I understand that you didn't have days to deal with this order but you did have a number of hours, do you agree with that?---The order is a guide. It's nothing more than that. The expectation is that the order, as in the intrinsic aspects of the order, are defined and re-defined when the police officers are there and then they engage in a more robust risk appreciation conversation, briefings, if then thinking contingency planning, that's when the - so the order is a template, it's a - to provide some sort of broad structure to articulate my - what's referred to as the "Commander's intent". This is my intent. You go away and build the nuance within the plan. So it wouldn't be my expectation that all the contingencies and elements would be noted within the plan itself, the snap order. I'd prefer them to spend time developing the actions on rather than spending the tied to the computer effectively appeasing me in terms of the plan - if that makes sense.

Would a - you speak about being a template, a broad structure, would it assist police in these circumstances if there was, in fact, a template?---Certainly it would. It's - and for the record, it's - we didn't have a template. It's something that I've - I won't say I've developed a snap order but it's something that's not regularly used. My position at the time and it remains my position today, that this was a routine matter. We don't respond to routine matters developing snap orders but what we do do is respond to matters developing action on and if then thinking plans generally articulated and verbalised within the responding teams to ensure that we respond to these situations safely, so we had to be very careful to arbitrarily say that if we respond to a certain set of circumstances that this is the plan and it needs to be documents in such a fashion because then it starts to constrain police's capacity to respond swiftly and decisive to the incidents that may or may not occur.

But in terms of this being - this email being an expression of your intent, your intent included the IRT conducting high visibility patrols?---Correct.

And that's not in the email, is it?---That's - yes it certainly is. It's - I'm certain it is.

THE CORONER: Page 2 (inaudible)?--- So it's plan - it's page 2, plan day 1, Saturday the 9th - - -

MS MOREAU: I beg your pardon?---Sorry.

It also - the order does refer to a 5 am arrest, correct?---Correct, yes.

And your intent was that that that occur for the purpose of mitigating risk of harm, correct?---Certainly, as a tried and tested framework that we use weekly - or I won't say totally, but very frequently.

But the email doesn't speak about the reason for the 5 am arrest?---Well, no It doesn't, but again it's implied by me as commonly accepted across the police service as to the factors that would necessitate such an action.

So you would have expected that anyone reading this email and learning of a 5 am arrest plan would have understood that that was for the purpose of mitigating risk of harm?---Correct, and then the nuances inherent within that commander's instruction would be developed by the teams on the ground preparatory to that action taking place, so what does containment look like? What does cordon look like, who goes where, who is going to knock on the door, that's the conversations, what do we do if this occurs, what do we do if that occurs, they are the sort of robust nuance that's applied to the plan within the team environment to ensure that it's done safely and effectively.

This email does refer to the funeral, you agree with that?---Yes.

And that's on the first page of the email. Do you see that?---Noted, yes.

But do you accept from me that the email doesn't refer to not attempting to arrest Kumanjaya Walker through the funeral?---Yes, agreed, but again, I provided explicit instructions to that effect.

But in terms of this being a guide as an expression of a commander's intent, wouldn't it have been prudent to include that in this email?---Agreed. There's so much more that could have been in that. But, you know, it's a rabbit hole - how far do you go down? There's so much more that could have been included but you've got to balance the administrative burden versus the practicalities of developing the actual plan within the construct of the team environment.

Those are my questions, thank you, your Honour.

DR DWYER: Your Honour, is that a convenient time to take the morning tea adjournment?

THE CORONER: Yes it is. We will adjourn for 15 minutes.

ADJOURNED

RESUMED

JODY NOBBS:

THE CORONER: Mr Boulten.

MR BOULTEN SC: Thank you, your Honour.

XXN BY MR BOULTEN:

MR BOULTEN: Superintendent, when you gave evidence last time, you gave a good sketch of your involvement in the community, and the establishment of the operation of Yuendumu Community Safety Framework. And you'll remember talking about the degree to which you were able to succeed in engaging the community in the framework?

THE CORONER: There were two frameworks, Mr Boulten. I am just wondering there's the Family Safety Framework, and then there's a second, more general framework that (inaudible)?---Yes, your Honour, so the Family Safety Framework was a framework that had been in place for a long time prior. But the Yuendumu Community Safety Committee Framework was developed in March of that year, as a – for lack of a better term, an apparatus to deal with a crisis situation arising from the rapid influx of property crime within the community.

And that's the one that you established?---Correct, your Honour.

And then there was another (inaudible) - there was another meeting that was more - - - ?---Many other meetings, your Honour, but - - -

- - - (inaudible) one other - - - ?---The Community Safety Action Plan Framework, the Local Authority Framework - - -

And the Community Safety Action - - - ?---Plans.

- - - Frame – Framework, was the other one that I think you talked about, I think.

Mr Boulten, I was just checking so I knew what you were talking about. I think you're talking about the Yuendumu Safety Committee Framework, is that right?

MR BOULTEN: Yuendumu Community Safety Committee Framework, was what I was referring to. But your Honour has cut to the chase, about what I want to ask about - - -

THE CORONER: I'm sorry.

MR BOULTEN: - - - and your evidence last time about the over-proliferation of frameworks, and the problems that that caused. The bottom line is, too many people coming from other places into the community, trying to do good, and it not

working?---Well intended, but constrained by bureaucracy and agencies trying to assert dominance within the space – probably not a fair characterisation, but that's the only way I could think of it at this point in time, but yes.

Trying to demonstrate they're earning the tax payer dollars that are being spent on it, right?---I won't provide a response to that.

A bit rude I suppose. But that's a problem, isn't it?---It's certainly – it's certainly a problem. I struggled as a player within that space to reconcile where they all fit together. There's a lack of opportunity for any framework to mature before the next crisis framework comes in. And all of them, again, well intended, are predicated on the necessity to have local decision-making methodologies underpin it, but each of them generally fail for the same reason, and that's a lack of buy in at a community level.

So a lack of buy in, let's call that, not enough local community members doing enough, right?---Well perhaps not doing enough, but perhaps not understanding it, and perhaps not having an appreciation of - - -

Or not being given the job?---Perhaps, yes, agreed.

And to do that, would involve a very big change in attitude by multiple agencies, right?---Correct, I – I can't speak for all agencies, but I'm pretty confident I could say all agencies have the same view, that – of the importance for local decision-making, as part of an integrated inter-agency framework.

And so that – to be successful, in establishing any such framework, it would need, wouldn't it, to trust Warlpiri people in Yuendumu with the decision-making power?---Correct, yes.

Was there any such trust in Yuendumu, in the years leading up to this incident, do you think, really?---I'm not sure if you could draw that as a reasonable conclusion. I can't answer that question. I – acknowledge that there was an absence of engagement. I don't know if that was a product of lack of trust, or a lack of a multitude of other factors that – that influenced that as an outcome.

Giving them the dollars to spend on themselves, is part of it, to succeed, isn't it?---Please provide context (inaudible).

Funding Warlpiri individuals, and Warlpiri Community to make decisions, is an essential pathway to success in any such framework, I suggest?---Yes certainly. Any framework has to have sufficient governance, it has to have sufficient funding, and support, or it won't be an enduring framework. It'll be a flash in the pan, it's – you know, as I indicated, the local authority framework, from my understanding, does have a reasonable community representation, and it's – because community members are remunerated accordingly for their value and input.

If I just check, the local authority that you're talking about is the Central Desert Regional Council, is that what you're talking about? Or there something else?---Well there's local authority across the whole Territory, regulated by local government. So, you know, in the case of Yuendumu it's, yeah, the Central Desert Regional Council -  
- -

But that's what you were talking about, when you gave evidence here last time about the one place where Warlpiri people come and engage, and seem to have a say - - - ?---Correct.

- - - you're talking about the Central Desert Regional Council?---In the case of Yuendumu, yes, and - - -

That's what I'm talking about?---That's the one location that I've tried to get a foot in the door, with – without success. I am invited to that from time to time, to answer questions that are pressing, around community safety. But generally, that results in a lag. Because it might be raised at a meeting, and then I don't attend until two months later, under an invitation, and then, either the issue has resolved itself, or has festered, or whatever. So I've tried to get a – a foot in the door, as a recurring – to discuss community safety matters, as a – at the start of any agenda, and have never been successful in that endeavour.

Superintendent, that council has responsibility for a range of infrastructure problem – issues. Roads, drains?---General - - -

Public health?---And municipal matters, but it's not constrained to that, or I don't know, I don't go to the meetings, but – but that's their mandate.

And they're elected by the community?---Yes.

And in that sense, democratic and answerable to the voters, right?---Perceive that to be the case - - -

And do you think that's a - - - ?---That's a fair characterisation.

- - - good framework, or a good mechanism for something that you might want to be involved in, in the future?---Certainly. I've – like to be a part of any conversation I can to help shape reform and immediate issues.

I asked you about trust. Your term for the strategy that involved the aftermath of this shooting last time was cultural deceit, was your term?---Yes, accept that term.

You cannot build a future based on cultural deceit, can you?---I acknowledge there's a long way to go to go – get back to the status quo, but acknowledged. Deceit is not a quality that is conducive to mutual respect and cultural - - -

I asked one of your colleagues this too, but on the night, even though there was ACPO Williams and other very senior members of the community outside that police

station, actually wasn't one of those people there that you could trust, even in the moment, with the knowledge even on a conditional basis that they don't share it. Right?---That's – I don't know if – and I mean this with the utmost respect, I don't think that's a fair question, but I'll answer it nonetheless. So, I trust Derek Williams explicitly with no doubt at all. But Senior ACPO, Derek Williams, is a man that I know is a powerful man in the community from a cultural perspective. I know he's a man that walks in two worlds and I didn't want to put him – two reasons. One, I didn't want to put him in an uncomfortable position; and then secondly and selfishly on my part, I didn't want to lose Derek Williams to cultural matters at the time. So, I deeply regret the – any relationship breakdown I'll have with Derek Williams going forward which inevitably there will be, because he's a man I respect very much. But I couldn't lose Derek on the night. As I expressed before, there were two factors at play here; deceit and Derek Williams. That changed the whole dynamics of the situation. So, that doesn't mean I don't – didn't trust Derek. It was a trust that had some complexities attached to it.

All right. Was that handling too much of those? In the moment, you couldn't tell him what everyone wanted to know, right?---Correct.

Yes?---Because if he's – my fear as to his cultural obligations - - -

Yes?--- - - - as a strong cultural man.

And therefore, strong cultural imperatives needed to be weighed against, primarily I'd suggest, safety of your members. What do you say about that?---Very narrow question.

It is?---Safety of the community, not the safety of the my members, inherent in which is my members, but as I indicated in my evidence-in-chief that I well and truly outweighed community safety over cultural sensitivities. And that's not something I'm happy about, but that's what I did at the time.

Superintendent, without questioning the fact that you weighed in the balance community safety issues, in those hours before sunrise, the immediate issues that were prominent, perhaps dominant, were the police in the police station, right?---No.

So - - -?---I can't accept that. It's - - -

Could – okay, could you explain, please, again perhaps, why did you want to evacuate the police station?---The prevailing risk and I've explained the lived experience that I have that informed and influenced my organic and ongoing risk assessment at the time. It's - - -

How is that a benefit to the community?---There was no benefit and - - -

How was that going to save the community or provide safety to the community?---It – there was no benefit and that's when common-sense prevailed and it didn't occur. Although, it was still – we still had a plan that would bring about the evacuation if

certain triggers occur.

You were overruled, essentially, weren't you?---Yes, but through a consensus conversation. It didn't take much in terms of having a conversation with me and reshaping – not reshaping, but – again, it was a consensus of conversation. Ultimately, yes, I was overruled, but it wasn't an arbitrary, you won't evacuate and I was in dispute of that determination. It was the right determination made. That doesn't necessarily say, in my mind, that any plan or consideration prior to that or post that was wrong in terms of the potential for an evacuation and some contingency plans around what that might look like.

Mr Nobbs, I think everybody understands that you will always stand by your decisions. That's a given?---No. No, it's not a given. I'm happy to - - -

But you've made your position very plain over the course of our - - -?---Yep, but no I'm happy to, if my decision is wrong, I'm happy to – I've got thick skin. If I make the wrong call, I'm happy to quite categorically sit here and say, that was the wrong decision at that point in time.

Right?---But not in relation to this.

Others before me have been putting to you the aspects of your decision-making were wrong, but you stand by what you decided?---In respect of this, yes.

So, Mr Nobbs, I want to – I'll come back briefly at the end of this, but I want to go back before the shooting. The fact that the health clinic staff decided that they were going to evacuate was also a decision which was of no benefit to the community and jeopardised their safety. Do you agree?---Agreed unequivocally and I indicated when I was engaging the health staff, that was an unacceptable risk that I did not support.

So, even in the face of your stated opposition, it still happened, right?---Correct.

So, can you, doing the best you can with hindsight, how would it have been better to deal with that problem, with that determined attitude by health staff at that time? What do you think could have been done?---It's a very broad question. I'm not quite sure if you could kind of narrow that. Is there - - -

So, your reaction after they knocked you back on the suggestion they shouldn't pull out, your reaction was to engage with Sergeant Frost and to provide four members of the IRT to provide high profile policing?---Correct, yes.

Okay. So, is there, in hindsight, any different thing that you might have done to deal with this pull out of health staff?---The pull out of health staff was one of five matters that was loomed large in my decision-making at the time that brought about the deployment of extra resources.

No, I understand that?---Look, I'm not sure. I'm not sure, other than a surge and

respite deployment, what more could have been done? Perhaps I could have influenced more. Perhaps I could have not accepted the determination from the senior manager within Alice Springs around the – and perhaps I could have taken that higher, I'm not sure. But that was a determination of the Department of Health – sorry, not - - -

Not the – or was the Department of Health?---Sorry.

Making a decision in less urgent circumstances would have been a good start. Do you agree? Like, let's have a chat about this before you tell your people to go out?---And that's what I engaged Ms Helen Gill in relation to, and - - -

She wasn't aware of - - -?---Sorry?

She wasn't interested in discussing it at that point?---No, no, we discussed it. But they maintained the determinations that they were – it wasn't – it was a - I won't even say it was a robust consideration, it was a respectful dialogue and a fulsome dialogue.

And you got nowhere with her, did you?---Well, the stated position was the position that was maintained.

Yes. And the suggestion that perhaps she might want to talk to your people and to local community leaders, that never came onto the radar, it seems. It's too late for that, or - - -?---I'm not sure. I don't know if – and I honestly can't recall. I don't think we engaged in an element of what engagement have you and your staff had with the local community, no I don't think that occurred.

Well, you assumed there hadn't been any, didn't you?---I don't know. I don't know if I did or didn't make that assumption at the time.

It certainly wasn't raised as a possibility in your discussions with Ms Gill?---No, I don't know if I explicitly asked, what local engagement have you had? It was a conversation – no.

Certainly, the withdrawal of the health staff put added pressure that you didn't really need on your police services, right?---The reasonable apprehension it would, yes. And that was one of Sergeant Frost's stated concerns.

After the shooting you had some discussions with the chief pilot at the Royal Flying Doctor Service?---Mr Damien Mills, yes.

Could you just tell us essentially what Mr Mills' attitude was to flying in to help Kumanjaji Walker after he had been shot by police?---I don't know if I could comment as to his attitude.

Of course, I'd accept that?---I could comment on the incidence of the dialogue so there was a number of telephone calls. So I deployed - off duty, deployed into the

police station, started establishing the INT. Upon arrival noted that the watch commander on duty was speaking to RFDS. I think I think I then subsequently called Mr Mills back, recognised the whole multitude of things that were going through at this time including but not limited to the necessity for us to send additional surge capability out there. I was aware that our police air wing wasn't deployable at that point in time.

Why is that?---Sorry?

Why were they not deployable?---We would have one asset in Alice Springs.

But it wasn't available?---He was on a night navigation statutory - - -

Whatever (inaudible)?---Yes, so - so he was deployable but there was going to be a lag.

Yes?---I wanted to get some resources - additional resources on the RDS - - -

You wanted the TRG?---No, I wanted - there was no TRG. I wanted whatever resources I could muster within Alice Springs to get out there - - -

I see, okay?---So it was an Alice Springs based RFDS deployment.

Okay?---So I engaged Mr Mills, through that explored the possibility of getting police on there, he said "In principally I support that although I am going backwards and forwards with my chain of command in terms of whether we will or won't even deploy, based on perceived risks." We talked about contingencies in terms of alternate locations to land, what that potentially might look like, and we continued in this sort of backwards and forwards dialogue until we got to the stage where, unfortunately, Kumanjayi had passed away and there as that time - and the air wing had come back on line and wasn't far off being able to be deployed so I then diverted the police resources from the RDS hanger which I had there in anticipation of a favourable determination, to the air wing for their subsequent deployment. But I got the impression that there was some reluctance within the command structure of RFDS based on perceived safety concerns, which I accepted in terms of deploying.

Did you tell Mr Mills that you had this arrangement in place where nobody on the ground even knew that Kumanjayi was close to death and that you had this sort of arrangement, let's call it - and I'm not calling it any tricky name, but did you tell him about your strategy?---No, I don't think I told the ruse then because Kumanjayi was alive at that time so - - -

Did you think that the arrival of the Royal Flying Doctor Service would enhance the handling of the members of the Yuendumu community who were very concerned about Kumanjayi?---Certainly, but I was more optimistic around the deployment of the contingency nurses from the adjacent community in terms of provision of treatment.

And if you have both, especially with the Royal Flying Doctor Service plane arriving , that would have been a really helpful mechanism, wouldn't it?---Certainly. Certainly.

Even after he'd died, if you were continuing with the ruse, that would have been a very helpful - - -?---No, I don't accept that. I don't accept the benefit in bringing the RFDS plane as part of a ruse, given they're in short supply, and I would hate to take away a capability from the broader community as part of a ruse - no.

The plan that did arrive was badged RFDS?---Correct, yes, through a lease arrangement that we had.

But - and it wasn't part of your plan, but it did actually help the plan in the end? ---Correct. I was aware of it at the time and that was one of the considerations at the time, it was clearly a part of the calculated deception that the plane was badged as a medical services plan.

Was it chosen because of that?---Well it's not chosen - that was the only plane we had.

That was the only one?---Yes, correct.

I just want to just check something. There has been a departure in the evidence between you and Mr Wurst about exactly what you said to him. It's clear isn't it, that in your conversations with Mr Wurst you weren't just asking for four people from Alice Springs to be deployed to Yuendumu, you wanted four people from Alice Springs who were IRT members to be deployed to Yuendumu. Do you agree with that?---I've got a clear recollection of my conversation with Mr Wurst to that end, yes.

And it descended to details about what equipment they should take - as IRT members, right?---Correct, yes.

You have a strongly expressed opinion that the IRT concept is worth backing in the future?---It's as a national best practice model and in fact it's my contention that with the size of the TRG and the tyranny of distance that we presently have and where that presently is situated, that it's in fact dangerous that we don't have - dangerous is not the right term - but unsafe to not have a cadre that can deploy to a situation that is - has potential risk associated with it.

So this IRT that we have been considering in this inquest, did you regard that as being properly trained?---I must admit I didn't have an appreciation of their degree of training, obviously in saying that they didn't fit within my command. I was strongly of the view that they were a highly trained, highly skilled, highly disciplined team. I had seen them training with TRG many times in the past, given my interactions around the police station, but I knew inherent within the concept that they had enhanced training such as close quarters tactical training, so it is my view- as is my understanding of all structures within the police services, that we have some of the best training in Australia if not in the world.

So the Coroner received quite a lot of evidence about these peoples' training?  
---Mm mm.

And the Coroner's view will be informed by submissions but not everybody shares your view about training. But you would certainly assume that if ever in the future there is to be anything like this, there would need to be comprehensive training and comprehensive selection criteria to ensure the people who are chosen are able to be properly trained. Do you agree?---Unequivocally - and just for the - to be clear, I said I had no appreciation of their degree of training, so I haven't provided any evidence contrary to anyone, it's - I don't know what their degree of training is.

So, Mr Nobbs, you did, on 10 or so occasions deploy the IRT but you never had any particular command over the IRT members that you deployed. Do you accept that?  
---No. I did have command over the IRT, they were deployed in a general policing sense, so the command structure was within my command structure, so, reportable to Sergeant Frost who in turn is reportable to Senior Sergeant Potts who is in turn reportable to me, so the general support - inherent within the general support deployment was a command structure that I was in charge of.

So the Standard Operating Procedures, such as they were, required debriefing and a report back to the superintendent in Alice Springs?---Correct, I may have misinterpreted your question. So no I didn't have any day to day command - - -

No?---Of the IRT. They fell under the Alice Springs Division. But if they were deployed as a capability, operating within my patch, they were deployed under my command, at that time.

For that operation?---Correct, yes.

But you're working very closely with the superintendent in charge of Alice Springs, worked geographically close, at least?---We're a team, yes.

What was – what was your understanding of the level of supervision that the IRT had in the two to three years before Kumanjayi Walker was killed?---Again, I – if – if you talk about it, as it – correct, start again. I can't answer that question definitively, because they were a cadre work force, that formed up on an as-needs basis. Which aligns with that sort of best practice methodology for you know, some of these regional task force that operate in – I won't say all jurisdictions, I think all jurisdictions, but certainly in most. I couldn't comment in terms of the supervision, other than to say I'm quietly comfortable that the mechanisms that we have in place, whether it's governance structures, the complaint management team structures, that there's checks of the use of force auditing structures - - -

(Inaudible)?---There's a multitude of structures that underpin an assessment of people operating on a day to day basis.

Well you're a member of the Complaints Management Team in Alice Springs?---At the time, yes.

At the time. How often did there – did – was there a meeting for instance?---Fortnightly, so - - -

Every fortnight (inaudible)?---The composition of the Complaints Management Team, the CMT, chaired by the commander for the – for the command. So Bradley Currie. Participation within that is the Professional Standards Command as well. And then each of the superintendents for their respective portfolio would sit in that meeting as well.

So did you hear complaints – hear about complaints regarding members of the IRT, when you went to those fortnightly meetings?---I would hear about complaints involving the whole police – the composition of the police station, so - - -

Okay?---So short answer is yes.

Okay?---But not limited to them, yes.

What was your role, as a member of the CMT, in considering the – the terms of the discussion about these complaints?---So my role is a prescribed member within my division. So my role, if you're looking at it within my portfolio, is to provide greater context in terms of where investigations sit. How an investigation might be progressing. Any ultimate outcomes, or preliminary assessments around remedial, bias or actions that may or may not be required. Checks and balances or mitigations, we might put up – in place. Early intervention type activities. So that's within the construct of my division. And similarly, the superintendent for Alice Springs would equally apply those same things for her division at the time.

Did you discuss officers in her division?---No. The CMT would discuss officers - - -

Well you're on the CMT?---Yep.

Could you say, look this fellow here, how come he's got 20 complaints in the last year or so, would you ever have such a discussion?---No I didn't have such a discussion, but that's a - - -

Did you ever hear of – of anybody - - - ?---Look I can't - - -

- - - who got more than just the odd complaint - - - ?---Yes, certainly.

- - - popping up on a sort of regular basis?---Yes, certainly I - - -

What would be said or done to that someone who is in that - - - ?---Well again, it's a very, very broad question. But I guess the premise of the Complaints Management Framework is that a complaint doesn't necessarily result in a finding of misconduct. It's a process that needs to be investigated. So – but it wouldn't be inconceivable

that if we had a repeat participant within that environment, that we potentially might go, well there's a few different matters here that all – are leading towards the same thing. What is it we potentially need to do, pre-emptively, whilst these matters are continuing to be investigated.

Was any such discussion had about Zachary Rolfe, when you were on the CMT?---Again, I can't comment. Only because it wasn't my area. So I'm not sure. The short answer is I'm not sure - - -

You're aware that he had a number of complaints against him, when you were on the CMT right?---Whether I was aware at the time – quite clearly I would have been aware, but I can't recall what dialogue may or may not have occurred, specific to that member, at that point in time. Clearly this process is – has demonstrated that there are a number of matters, but me articulating or reflecting back on particular things that were said, relative to that member, I can't provide advice. But I'm – as I indicated, the process was such that it's quite possible that there may have been conversations to that effect.

So had there been a conversation, not necessarily about Mr Rolfe, but say a member with multiple complaints of excessive use of force in arrest, what type of action could be taken of the nature that you just discussed, without a final determination of the complaint, or pending upon the determination of the complaint?---There could be a multitude of outcomes. So if we're generalising - - -

What sort of things happen?---Generalising. So end to end, it could be from the start, in terms of welfare conversations. Through to remedial conversations. Through to a placement within an administrative position, whilst matters are continuing to be investigated. It could be a first personal management plan, notwithstanding the disciplinary matters are still continuing, where we put a – some continuity in terms of supervision. There could be parameters put around that. There's a whole multitude of things that – that could be put in place as a – as a – notwithstanding the investigation may not have reached its conclusion.

Did you see any of those mechanisms used with Mr Rolfe?---Again, I can't comment specifically to Mr Rolfe. That's a question for the superintendent for that area. I honestly can't recall.

Yes, okay.

THE CORONER: Did you see any of those mechanisms used for anyone?---I've used those mechanisms for people, your Honour. That's – that's inherent in the structure. It's – you know, it's not just about misconduct. Sometimes it's about welfare. It's a – it's just part and parcel of management.

MR BOULTEN: Well what about in Alice Springs? Did you see anyone get the benefit of those types of mechanisms when you were on the CMT?---The – the things that I just outlined, are things that would occur outside the CMT. I – it's not fair or - - -

Well - - - ?---It's an answer I can't give. I don't know what was or wasn't done in respect by the superintendent in charge of that area, to anyone that may have been presented on the CMT, that would require an extra level of care and retention. That's a question for the superintendent. I – I simply can't answer it, other than to say, I would regularly engage in those end to end considerations, if were warranted in the circumstances.

The IRT members, might have been the direct responsibility of the superintendent in Alice Springs, but they were being deployed as part of your operations, and you needed to be sure that they were safe, right? And fit for purpose?---I assume, as a proud Northern Territory Police Officer, that we have the best training in Australia, if not, in the world, that all my police officers that are being deployed, are sufficiently disciplined, and are sufficiently trained, to undertake the roles that they put in place to deliver. That's an assumption I make across all of it. I don't have an appreciation of the nuances of the training associated to negotiators. I don't have an appreciation of the nuances of the training associated to the dog unit, TRG, intelligence units, all those. But I assume that they are highly trained police officers, given what I contend as being the most – yep, that's my view.

When you were on the CMT, was there discussion about problems with particular officers regularly turning off their body-worn video cameras?---I don't know if the conversations were so pointed to a deliberate action or a perception of a deliberate action that they're turning it off. Certainly, multiple conversations about the challenges - - -

Not being on?---Not being on, correct, yes. And - - -

So, it never got to the point where someone would say, well I wonder if he's turned it off. It was all about, it's not on, as opposed to why is it so, and perhaps he's turning it off?---Again, if it was me in terms of my portfolio responsibility, and as I've indicated to my police officers, if I have repeat instances where – so it's not a question of whether it was deliberately turned on or not turned on, or the fact remains, we generally have a complaint and we generally don't have body-worn evidence in support of that. That's generally then raised as one of the ancillary issues inherent within the complaint. And if I have cases where I have multiple instances of noncompliance with the policy framework around body-worn video, I then indicate to the police officers that are the subject of those repeat instances that the next investigation that I undertake will be a more serious investigation, so a category 2.

Why isn't it on?---Correct. But in most cases, the conversation is, why isn't it on? In most cases, it's – it's new technologies or in the situation that we were responding to, I simply forgot or things such as that, to that effect.

Okay. Superintendent, last time you gave evidence, you were asked about the racist terms of some text messages that were put in front of you?---Correct, yes.

And your Honour asked whether you had heard such terms in the general community in Alice Springs and you said that you had. You said, "I've seen it sort of deteriorate over the years as a relatively – it has a relatively intolerant community." Are you talking about Alice Springs being a "relatively intolerant community"?---Yeah, again, as a generalisation, it's again probably not fair to categorise - - -

Categorise the whole community?---Whole community totality as being an intolerant community, but certainly over my 24 years' connection to this community, a community I – you know, I consider my home, notwithstanding I live in Nhulunbuy now, but I spent more time in my life in Alice Springs than I have anywhere else. It's a community that I love and yeah, I've seen a deterioration of attitudes over the years.

It's getting worse?---Correct, yes.

You were asked, "But do you say in the police station, you've near heard of seen or heard that language?" And you said, no, you couldn't say that. I want to ask you to just tell us frankly about the use of racist language to start with in the police station at Alice Springs and amongst police officers in Alice Springs?---I think what I said or certainly what I implied was that, given my rank, I don't see it on a day to day basis, but I think it would be naïve and disingenuous for me to say that it's potentially not there, given the deep dive we've had on a few matters here has - - -

Superintendent, you're there. You're of that rank for a reason?---Correct, yes.

And you've got police officer's instincts and a lifetime of experience. Could you please tell us frankly, are there people in Alice Springs who are not ashamed amongst their colleagues to talk filthy talk about Aboriginal people?---Again, I am there, but I don't operate within the confines of the muster room. I'm, whether that's rightly or wrongly, confined to an office, burdened by the computer on a day to day basis. I don't see the racism or racist comments on a day to day basis, but again, as I said and I'm trying to be as honest as I can, I think it would be naïve for me to say that there aren't some – as I indicated, we're a microcosms of society - - -

Sorry, go on?

MR FRECKELTON AO KC: I would ask that my learned friend not speak over the witness.

MR BOULTEN: I apologise to him.

Go on?---We are a microcosm of society, the police service is that. So, again, all I can say, as honestly as I can, is that I think I would be naïve to say that there's not some people that hold inappropriate and racist views. But I don't know how I can be more honest than that.

So, racism of course, as you would understand, can take many forms, not just

words, but attitudes and actions?---Correct.

Or inactions?---Correct, consciously or subconsciously, yes.

Yes. And can be a system that disregards people because of race and treats them differently accordingly. Do you understand that?---Agreed, yes.

Okay. Has it ever occurred to you that some of your colleagues' excessive use of force might be driven by a lack of human empathy with the people they are arresting.

As a general or broad proposition, I accept that that could be a reasonable determination, but again, that's a generalisation. It's not specific to anything, but I accept the nexus, the potential nexus, yes.

The potential nexus is very real when nearly 100 percent of the people who get arrested are Aboriginal people, right? Do you accept that?---The potential nexus, yes, is real.

Yes. And it's – has anyone, yourself included, in the last two or three years, specifically considered whether inappropriate use of force by police officers under your command and operating here in this township might be connected with a lack of human empathy for Aboriginal people?---I've got no doubt that every single complaint and every single investigation, there would be due consideration to whether this is or isn't racially motivated, whether there is or isn't racial undertones. There's no doubt that is a standard consideration in respect of any investigation, given the disparity as you've outlined in terms of Indigenous offending rates.

But it's a very difficult topic to deal with, isn't it?---If the contention is that there is widespread racism permeating the culture of the police service, it certainly would be  
- - -

Or to label any individual as a racist is a very significant conclusion to make, and every decision about use of force, impropriety in policing in any way would need to think two, three and four times before you'd jump to that conclusion?---Certainly, you know, if you're going to take the extraordinary step to call someone a racist, you'd better make sure that you've got an evidence base to support such an assertion. So, yes.

So, Mr Nobbs, wherever this topic is considered, the racist gets the benefit of the doubt. What do you say about that?---No, I don't - - -

Well, unless you've got them cold on – you know, a text message or you've got them on a video saying something about Aboriginal people that's obviously racist?---Well, look I think – again, it's probably not a fair question in the context of this in isolation, but I think the principles of natural justice in all the legal maxims talk about the benefit of the doubt generally goes to the accused. It's – I don't think that's limited to racism.

What about the system? How do you judge the system? Do you give the system the benefit of the doubt?---Please explain the question.

So, if your individual is accused, that person gets all the trappings of natural justice. But if the system looks, and acts, and sounds like a system that acts in one way towards Aboriginal people, and in a different way to white people, how do you judge the system?---Look, the system, as a broad construct, is an imperfect beast. I acknowledge. But the system and the continuous improvement, and the evolution of reform within the system is what we all continue to inspire to – to achieve. It's – but it's imperfect. It's – there's always opportunity for reform and tweaking along – around the edges, but I'm not sure – it's a pretty abstract discussion here. I'm not quite sure if I'm adequately answering your question but - - -

Sure. For a single individual, you're doing a very good job. But can I say this, Mr Nobbs, no one would suggest for a minute that you hold any racist views what so ever, except, you would acknowledge, that what happened under your command, in the hours after Zach Rolfe shot Kumanjayi Walker, acted in a way which was actually discriminatory towards Warlpiri people, because you couldn't trust the Warlpiri people, because of their practices? Their cultural practices, right?---Yeah, and – and I think I said in my evidence in chief, I really struggle with the dichotomy - the inherent conflict between our system and that system. And – but I acknowledge, as a bi-product of that, disparity that – yeah, that the Warlpiri people were – yeah, it's - - -

Were?--- - - - - were disadvantaged, in the context of their cultural – and I acknowledge the extreme importance of culture within the context of the Warlpiri people, and Indigenous communities more broadly. But – but the system, as you abstractly outlined, is bought about a – a conflict there. And you know, that's hopefully what this process will bring about. Some meaningful reform, not just for the police service, but equally for the Warlpiri Community as well, in terms of how we overcome some of those insidious – well not insidious, but very, very complex challenges.

That's all I wish to ask.

Thank you, your Honour.

THE CORONER: Thank you, Mr Boulten.

Anyone who's going to be quite brief? Ms – no – well I'm happy for you to start. And we can keep going, and see if we finish you before the lunch break. We might still have a bit more to go.

MR MCMAHON AC SC: I hope to finish before the lunch break, that's for sure, your Honour.

THE CORONER: Sure.

MR MCMAHON: Just on that last point, you mentioned the dichotomy between – sorry, Superintendent, I’m McMahon and I act for the Parumpurru Committee of Yuendumu?---Good afternoon.

Which is the justice committee. I’m not asking you to solve this dilemma. And you’ve identified it as a dilemma, the conflict between what you saw as the need to employ a rouse on the community on the ninth, and balance that against all the factors. And our focus here is looking forward, actually, ultimately looking forward to solving problems in the future, and avoiding similar problems. But you’d accept wouldn’t you that the reality is that whether or not the police took the right view about employing a rouse, and opinions obviously differ on that. One of the predictable consequences, we now know, is that there’s a long term and significant break down in trust between the police and the community. You accept that?---Acknowledge, yes.

And by employing an ambulance in the way that it was employed, as part of that rouse, it actually introduces a potential long term break down in trust of ambulances, and their employment in high-risk and dangerous environments - - - ?---The - - -

- - - such are some of the examples you gave earlier today?---Yes, certainly, and the use of the ambulance in the rouse was a regrettable decision on my part.

I’m not seeking to attribute blame to you. I’m just – we just want to highlight the fact that you recognise those realities now? And - - - ?---Regrettable for the reasons that you’ve outlined, yes, and – and such the acknowledgement.

And in fact, in particular, even as you do maintain the position, now I’m not passing any judgement on that at the moment, but as you maintain the position that it was a necessary step for you to take, to employ a rouse as between the police and the community. You would agree that employing an ambulance as part of that rouse, in retrospect, was an extra and unnecessary step?---Correct, yes. The rouse could have still been facilitated without the use of the ambulance. Well sorry, no. The use of the ambulance was still appropriate, potentially, although I acknowledge the – the fall out in terms of what you’ve indicated. The potential eroding of trust of the ambulance, but certainly the utilisation of the health workers within the ambulance was an unnecessary part of the plan.

THE CORONER: How would it be – have been operated, without the health workers, given the limited number of members in the station?---Well, your Honour, I still maintain we could have had a police officer drive that vehicle, in isolation. It’s a vehicle. It was – seven police officers in the police station at the time. Three vehicles used in the rouse.

MR MCMAHON: Can I suggest then, isolated in the question of the appropriate use of a police rouse or not, and as you know, opinions will differ on that, can I suggest that one of the learning experiences going forward is that it would never be appropriate to engage the health services, or ambulances, or medical clinics, or doctors or nurses, in any such rouse, even if the police formed the view in the future,

after learning from this experience, that a rouse was necessary in some other (inaudible). Can you accept that?---On the balance I could accept that, yes.

One thing you said a couple of times in answer to questions my learned friends about - - -

A PERSON UNKNOWN: What's his name.

MR MCMAHON: What's his name.

Mr Boulten, SC, Forbes Chambers, formally President of the New South Wales Bar Association, et cetera. The – the – you said a couple of times that you made the assumption of the IRT and all officers (inaudible) you seemed to be focussing a bit on the IRT, were very highly trained, and trained as well as anyone, perhaps anyone in the world?---Correct, yes.

That's an nice idea to have, but there's – it's not at all obvious from the evidence in this case, that the IRT were particularly well trained, or had a great understanding of their role, at various points of an operation. So I just want to ask you, with regard to your assumption about well trained, are you saying that it's your hope, and wish, that the people like the IRT and Northern Territory Police are well trained, or it's a fact that – are you actually saying that based on your learning and observation and experience, compared to other police forces elsewhere in Australia and the world, that they are in fact better trained than most, if not almost all?---Look my view is that it's more than a mere hope. It is an expectation. We have some of the most challenging – so one of the most challenging operational environments, by far. Certainly in Australia. Can't comment beyond that. The volume of matters in which we deal with, as a broad proposition, self-serving as it may be, it is my contention that the Northern Territory Police, are held in high regard, as in respect to their decision-making, their problem-solving. The engagement frameworks. Their capacity to deal and de-escalate situations, given the persistent, pervasive and prejudice nature of the matters in which we deal with.

All right, so that's talking about the Northern Territory Police as a whole. And that – and I'm just isolating IRT. You're not including IRT trained - - - ?---I guess I am. That's, I guess, what I'm trying to say is, that inherent within that is any of our discrete units, divisions, sections, capabilities. My more than a mere hope, my expectation or true belief in understanding is that the training and the experience that we gain on a day to day basis is a product of - is high. Sorry, I'm rambling.

Well, (inaudible) but that's usually my fault, not yours. The point I'm trying to make is when we see what the items you've done in this case, one of the things that does not jump off the page is that they are highly trained and highly skilled. All right, now contrast that we've seen in this court on the TRG, we've had evidence from the TRG which I am sure most people in the court found compelling in terms of excellence of training and so on but the IRT have one week of bush crat skills, one week of black skills in a house, you know, clearing a house or clearing rooms as their two week course, then they have one day every five weeks, so it's actually a very modest

amount of training if you're calling them an elite unit which is an implication of the you've talked about it, you would accept that?---Look, I accept that you're telling me that's the extent of their training. I don't know what the extent of their training is, I wasn't there when they were developed, I wasn't there when they were recruited, I wasn't there in any of those aspects. What I - - -

Well, (inaudible) answer to the questions because your hope that they are well trained is not based on a specific knowledge of how they are trained, is that correct?---Again, I don't use the term "hope" and I'll be clear, that that's not my position. It's an expectation and a reasonable expectation that they are - received a level of training. You've talked about - if I could finish? You talk about the professionalism and highly developed skill set of the TRG. What I - as I indicated before - what I had cause to see, through my management within Alice Springs was TRG working hand in hand with IRT not only in the field on occasions but also within the training environment. So there's a reasonable expectation that TRG would influence and there would be parallels in terms of the methodologies and training and skill set that would come from that is, I would say, more than a mere hope but an expectation.

All right well we will just leave that. When Ms Moreau was asking you questions you gave evidence about the crime rates of the Northern Territory?---Yes.

On a per capita basis and how severe they were, you went over a number of incidents over about a 12 year period 2010 - 2014 - 2018, and so on?---Yes.

And you spoke about your concerns of sometimes seeing things quickly deteriorate? ---Yes.

And you also mentioned that in the scheme of all of that, Yuendumu also had high data or higher data in some areas for crime and so on. Now, just to put that in the context of the questions I am about to ask you about the various committees that you refer to. You've been a policeman, I think, for 25 years?---24 - 25 years, yes.

And at least 18 being in this part of the world in the southern part of the Northern Territory?---That's correct, yes.

And as I understood what you've said to various counsel, your impression, based on what you've observed and also what you've learned through data and so on is that things have just steadily been getting worse during your career, in terms of the level of crime, the nature of crime and the pervasiveness of crime?---Yes, we maintain on a secular basis a long term upward trend in crime and dysfunction. There's cyclicalities I acknowledge, but as a broad proposition, an upward trend over the 24 years that I've been associated with the police service.

And you are obviously very reflective in the work that you do, so you'd agree, wouldn't you, that if that's the reality that you're confronting as a senior member - so as a commander - I don't mean rank - but as someone who commands and develops policy - implements policy by commanding officers, if that's the reality over

all the changes that have occurred in your time and you'd accept, wouldn't you, that it invites the need for the very serious consideration of radically changed approaches and creative responses to those problems?---100 percent. I am open to try anything.

I just want to consolidate for a couple of minutes this question of committees that you've been asked about over different parts of your evidence and I want to take you to four of them so we can just get a clear picture in our minds of the difference. You've got the Yuendumu Community Safety Committee framework?---At - sorry - yes, at the time. It's no longer a framework, yes.

Well, it's called the Yuendumu Community Safety Committee, right?---Correct, yes.

You actually started that didn't you?---Correct, yes.

About - in 2018, is that right?---Correct, March of that year, yes.

March '18. And it involves - - -?---Sorry March '18 or '19?

It doesn't matter for these purposes?---Okay, sorry.

Because I'm leading ultimately to this question of the best way to interact with the community and your observations when you were here last about the proliferation of agency meetings, the proliferation of meetings, the duplication and so on. So - - -

THE CORONER: Can I just ask though, when did it finish?---It lasted for about six months. We resolved - well, I won't say completely resolved but had a substantial abatement in property crime and then reverted back to the standard community safety action plan framework and the integration within that framework, your Honour. Give or take six months, your Honour.

MR MCMAHON: Can you place that in the context of the 9 November 2019 killing of Kumanjaji Walker, that six months, because March of the year would take you up to just before the shooting. Is that the year that this happened?---I'm sorry, I'm not sure of that.

That's all right. And that - so that no longer exists, is that right?---Correct, yes. It was - it served a purpose, it was about a higher degree of governance and mutual accountability and me, I guess, attempting to drive the narrative and bring about mutual accountability across the service providers and community to address a specific issue, and the things that were periphery to that specific issue.

And the specific issue that we're seeking to address is property crime?---Correct. And more to the point, predominantly youth related property crime, so it had a leaning towards - - -

I am not at all criticising you for instigating a new proposal like that, that's exactly the sort of thing we mentioned a moment ago, but I just want to make two observations

and see if you agree but firstly, is that it was driven by you, as someone not living in the community, obviously?---Correct, yes.

And secondly, what you said last time is that it wasn't well attended by the Elders? ---Correct, yes.

It's not a criticism because I'd be the first to applaud a genuine creative effort to solve problems that you've identified, but that was the upshot of it, correct?---Yes.

Now, you've spoken about the community safety action plan, which is a CSAP I think it is sometimes known as?---CSAP, yes.

And that involves once again trying to deal with matters like domestic violence and social problems, correct?---Less - less domestic violence but certainly domestic violence from a broad construct but not probably specific aspect - more amenity, social order, broader sort of environmental issues, so community safety.

And if I understood your evidence last time, although it was meant to engage the Elders, your sense was that the community leaders were not great at attending those meetings?---Yes.

This is from your - I am just reading - - - ?---Yes. Again I'm - so I'm just trying to reflect that it's - as a broad proposition that's the case but as I said in my evidence last time, I've tried to challenge the status quo in terms of the way we think about community safety action plan insofar as that it's a meeting that we have at 2 o'clock at the basketball court and if you're not there by 10 past 2:00 we will cancel it and move on. But to change our way of engaging clan groups as part of the broader CSAP framework as a - - -

So, we've all got that evidence?---Yes.

So I'm not trying to cut you off, but I'm just being time efficient and your strategy for talking to your officers was to try to be creative about how you don't see it as a once a month or once a fortnight meeting to be creative about how you can engage with the community on this issue?---Correct, yes.

Maybe talking with individuals, maybe talking to groups, however it works, even go and play footy all day if it works?---Correct, yes.

The CSAP or Community Safety Action Plan still operates?---Yes.

And do you attend those meetings?---No.

And do you know how often it meets?---It's supposed to meet monthly.

But when you say "supposed to", that invites the thought that perhaps it doesn't?---Agreed, for the reasons I just outlined, that they may not occur through

cultural reasons, they may not occur for lack of attendance. It may not occur – but through our, sort of, policy framework is it's supposed to meet monthly.

All right. The next framework which I identified last time was the family safety framework which, as I understood it, is essentially not involving the local members of the community, but involving, rather, those agencies with statutory obligations?---Correct, yes.

And so there's no buy in at all from community Elders or community members?---No, well - - -

(inaudible) I'm not criticising that, I'm just setting out the framework - - -?---We're talk – yeah, agree that there's really deep, personal conversations within that framework.

And it's one reason that there are not individual members of the community present as Elders or emerging Elders, is because, at that meeting, there are agencies swapping information in a way which is – can be appropriately done between government agencies, but not with individuals who don't have certain obligations of privacy and so on imposed upon them?---Correct.

Okay. And then the – the next one that you spoke about was the local authority meetings, which Mr Boulten asked you about?---Yes.

And you understood that probably to come from the Central Desert Regional Council?---In the case of Yuendumu, yes, but it's – again, it's across the Territory.

Yes, so it might emerge in different ways in different parts of the Territory?---Fundamentally, they're the same, led by local government shires or the like.

Yes. And you're not invited to that?---No.

But you thought that that one worked reasonably well, that – those meetings worked reasonably well in terms of local community buy in, partly because there was a – people were remunerated for being involved in those meetings?---So sort of a broad observation. I don't know what occurs within the meetings, because I'm not invited, but when I am invited, and I'm engaged from a community safety perspective, the dialogue is robust, considered, constructive, and the participants are engaged. And then I leave.

And has buy in from the local community?---Correct, yes.

In terms of attendance and participation from Elders and emerging Elders?---Again, as a broad proposition, yes.

Yes, yes. And - - -?---I must admit, I don't think I was ever invited to Yuendumu local authority. I've been to many others.

All right. So to summarise looking at those groups that we've just – those meetings or frameworks that we've just identified, it's not a criticism, it's just trying to analyse and understand and build for the future, do you follow?---Yes.

In each case, they're a framework or a committee which is set up from the outside?---Yes.

And brought in to the community, in the wish that the community buying in and all parties would mutually benefit?---Correct, there are others as well that we haven't touched on, but one of the factors in building those frameworks is a degree of community consultation, but again, that notwithstanding, doesn't translate to – as a broad proposition, community participation. Some communities, there's really good community participation. But that certainly wouldn't appear to be the case there.

As you appreciate, I'm just acting here for people from Yuendumu, and that's what we're focusing on?---Yes.

And to summarise your analysis of the proliferation or the co-existence of all of those committees and frameworks and so on, you said last time that if – there was an over proliferation of such committees and frameworks, and that the effect of that, was that there were too many meetings overlapping, and too much replication of the same intention. Do you agree with all of that?---Agree.

And overall, far too little buy in from the community?---Agreed, and then further – an inability for the framework to mature, because it's then promptly replaced with another framework.

As one after another fails or doesn't do a good enough job?---Correct, yes.

And implicit in all of what you're saying, which is why I'm asking you these questions, is because of the reflection that you've obviously had on this issue over many years, is that you implicitly recognise the value of local community buy in to any of these frameworks, and how important it is. That test goes without saying, really, doesn't it?---It's critical and essential.

And, again, built within that idea, you accept very clearly in your mind that as part of that, there must be local decision-making, decisions about all of these issues which cover such a wide – not just law and order, which is your main focus in – but other issues which you are interested in, but have no power over, such as housing problems. You're interested in those matters, even though you have no power over them, correct?---Correct, they're all intrinsically linked, yes.

Because you've previously identified the environmental factors such as overcrowding in housing, is linked to the law and order problems, as your (inaudible)?---Mandate.

And in fact, if I understood what you've previously said, you quite readily link housing problems with law and order problems?---I didn't – don't think I said that, but I acknowledge - - -

No, you didn't say - - -?---I agree, yes. Short answer, yes.

I'm (inaudible) tracking an idea from various things you've said?---As one of many factors, yes.

Because where there's overcrowding, it might be – where there's overcrowding, it's much more likely that there will be a whole variety of reasons why younger children might be wandering around at night unsupervised and things like that?---Agreed, yes.

And in terms of environmental factors, which is a word that you used when you were being questioned by Dr Dwyer, in terms of housing, that would include things like low quality housing, housing without air conditioning, and those houses nevertheless being overcrowded, all creating a mosaic of problems?---Agreed.

Not for you to solve?---No, and I don't - - -

A questions you've been asked about are not for you to solve, but what you bring is personal observation over many years in participation?---Correct, yes.

So in terms of thinking about this for the future recommendations we will be making to her Honour, and looking at creative ways forward, if not solutions, would you agree that there's real value in considering a local authority of Yuendumu Elders and emerging Elders as a central organisational body, so an elected group of leaders, and emerging leaders, who are elected from the whole of the community, north, south side, west side and so on, who are appropriately remunerated so that it's reasonable to expect them to invest huge amounts of personal time in these issues. Would you agree that if there was such a central elected leadership group, that you concede that that could well work to deal with all the agencies that we've spoken about today, as being a voice for the community, as being a group to whom someone such as yourself or your delegates could come and speak without the kinds of issues you've been spoken or questioned about by all counsel?---100 percent. The local decision-making is central to everything we do, and if we don't have local decision-making, we just – well-intended, but flapping in the breeze, basically.

And you can see how rather than having a few Elders turn up to one meeting sometimes, and other Elders turning up to another meeting on other times, would you agree that if there was a local leadership authority elected from within the community, that that would be potentially an excellent way to solve some of the problems you've then identified about how previous efforts have failed?---Yes.

I've just got two other points for you. One of the issues of real concern to my client is a failure of some witnesses, and I say this with respect to all of your efforts, you're probably one of them, to appropriately use words which are important and "payback" is the word I'm talking about. And I don't intend to be critical of you here, but would you accept that what's happened today in this court, we're talking about payback.

We actually merging two different ideas and you understand both those ideas, but we're using the same word for two different ideas. One of them is something which you understand and spoke about, which is traditional lore and how payback, which is the word you used in English for traditional law, but in Warlpiri, obviously it's going to be Warlpiri words. I don't contend for a moment that I am the suitable person to discuss this with you, but it's on the agenda. It has been spoken about today, so I'm just going to raise it with you. From what you said, you understand payback in terms of traditional culture to be quite a sophisticated concept. Would you agree with that?---As a concept, yes.

In traditional customary lore?---Yes.

It involves people, after some offence is done, meeting, consulting, negotiating and agreeing on what ought to be done as a result of the earlier offence already committed. Do you agree with that?---Yeah, about maintaining discipline, finalisation of matters. It's bringing about peace and harmony, acknowledge all those aspects, yes.

That's right. And if, as a result of that coming together and discussing a lot of that, there's acceptance of a solution and then the offender accepts that and justice is done. Now, that's, if you like, a very simplistic but satisfactory explanation for these purposes of what payback means when it's translated into English?---When undertaken through those perimeters, yes.

Yes. And then you spoke about another kind of event which involves the anger and the – you know, the alcohol-fuelled examples you spoke about, and can I suggest to you that it would better to use an alternative word to payback, because once we start using the word payback in that context, we're really talking about anger and fighting and rage and revenge and those sorts of concepts which are quite different and distinct from what you just spoke about a moment ago is our understanding of traditional and customary lore when it comes to payback?---Conceptually, yes, I understand that and agree wholeheartedly. My reference to the term is an echo of the reference applied by Indigenous people to the term specifically payback as a catchall for a whole lot of violent disorders. And as I indicated before, I could count on my hand the amount of times I've seen it powerfully – through structure governance and it's quite powerful to watch.

I appreciate - - -?---Well, I'm trying to answer the question. But I've seen – and it's the term used by the individuals, it's not my term. I'm merely applying it to the term used by the individuals.

So, in terms of going forward from here, you would agree that it would benefit all of us when we're talking about these concepts in Aboriginal communities to bear in mind the different between, on the one hand, what we spoke about as traditional customary lore where the word payback is used and the other events which, bearing in mind what I just said, payback is not really going to be a suitable way to - - -?---Agreed. I agree, that's not payback.

All right. Thank you very much. Sorry, I have one other question and I'm picking up your Honour's issue.

THE CORONER: But the difficulty is when there is an excuse or explanation proffered by the person using the violence or force or taking the action and labelling it as payback to try and legitimise or excuse their behaviour. So, it's very difficult for, I think police, to try and put a different label on that when it's being presented to them by the person engaging in the conduct as a form of payback?---In particular, in the context, your Honour, that that person is an Indigenous person. I have a very good, practical, lived understanding of payback, but I certainly don't purport to be an expert. So, if an Indigenous person used that term, I acknowledge there's a multitude of complexities and nuance within that term, but that's the determination I would then reach.

And it would certainly be a term that judges in the Northern Territory would be familiar with being used regularly in their courts to describe the behaviour that is being considered.

MR MCMAHON: I appreciate the point both your Honour has made and the witness has made and also, endeavouring here to bring to light the concerns that our client has about the way that all of us sometimes use this word and trying to move forward, trying to get a better clarity around that. My last point is picking up your Honour's point from earlier today in terms of negotiators, I'm now asking only about the value of having a negotiator at Yuendumu on the 9th going into the 10th of November 2019, but conceptually, can you consider this for us? When you were asked earlier in the day on 9 November, to authorise the deployment of some personnel. I'm not interested in whether anyone said it should or shouldn't be IRT. Let's just assume for a moment someone says, I need the IRT. We've got a problem at a particular place. Now, two other things that immediately come into mind for you are the use of a dog, a dog and a trainer, it's probably not called a trainer, a handler?---A handler, yes.

And the use of a drone?---Yes.

Correct. Now, so in the night (inaudible), you're well-resourced and so on, when you deploy the IRT to what is presumably regularly – relatively unknown situation with many variables and the potential for many different outcomes or perhaps not many different outcomes, but radically different outcomes; the potential for radically different outcomes. Is there any reason why the – conceptually, you can't build into that deployment as a matter of course and as a standard step, the inclusion of a negotiator, so that every time the IRT's deployed, except when you've got for instance, some bloke running down the street, shooting randomly, which a negotiator's not going to be much use there. But for many of the deployments, why not just build in to the way that a unit, such as the IRT, if there's a future manifestation of it, the engagement of not just the well trained, extra trained police, and perhaps a dog, although I will be making submissions about that. I'm not going to bother you with that now. Drones, which give your eyes from the sky. Why not, just as a matter of course, conceptually introduce a negotiator as part of every

deployment, except where it would be obviously futile to do so?---Doctrine you would, but again, in the context of this matter, I considered a routine response in a - - -

Can I ask you – I’m not talking about the context of this matter. We’re talking about moving forward?---Agree, but I guess where I’m just trying to finish by saying, the negotiating element for me, in this matter, was Constable Alefaio, was the person that was to facilitate that function, at the 5 am arrest plan - - -

Sure, if - - - ?---For a routine matter. I don’t think you could constrain all routine matters with the need to have a – a negotiator deployed. But certainly, I acknowledge that there was an opportunity here, given there’s a lag in time, that potentially could have been some consideration for - - -

So just perhaps to turn that a bit. I don’t want to get bogged down in the details of this case about which we know more than most people would ever know about any case eventually. But as a way of moving forward, and a way of deciding to deploy a unit such as an elite unit, whether they’re called TRG or IRT, do you agree for conceptually, that whether or not a negotiator is actually sent, it should initially be part of the immediate response, in terms of considering what assets to deploy?---I don’t know if we get to the stage of arbitrarily saying that you will and you must, but certainly acknowledge that the utility value of a negotiator, in the context of the scenario that you’ve just outlined, is very beneficial. And should be – the default should be to consideration for utilisation, not consideration for not utilisation, if that makes sense.

And perhaps the final question on that, although I think the next witness is more suited. The next witness is Superintendent Vicary, I think. Is it Vicary?---Yes.

A name like that. Whatever value command of Northern Territory Police and Government of the Northern Territory placed on the IRT, whatever value they said they placed on that, it’s the case isn’t it, that the entire budget of the IRT was simply part of the operating budget of Alice Springs Police Station. It had no separate budget for acquisition of any particular things that they needed, or training that they needed done?---I’m not sure if I knew that at the time, and in fact, I’m not sure if I even know that to be the case now - - -

And I’m not saying it is the case. It’s just something that – material I’ve been reading, has led me to think that. But I may be wrong. But do you – you don’t know the answer to that?---No, I don’t know the answer to that question.

Do you agree, that it’s – well from what I’ve been reading, it seems that at the very least, the IRT was financially very constrained and very under resourced?---Correct.

And in order to operate an elite unit required to perform extraordinarily hard tasks with a great deal of training in excellence and precision, and so on, if people are going to make a decision that such a unit is needed, then they need to make a

decision to budget accordingly. So that it's well financed, so that it can do its job properly?---It's an obvious statement, which I support.

THE CORONER: We'll adjourn for lunch, and (inaudible).

WITNESS WITHDREW

ADJOURNED

## RESUMED

THE CORONER: Yes, Mr Merenda, you're next.

MR MERENDA: It is.

THE CORONER: Thank you.

XXN BY MR MERENDA:

MR MERENDA: Superintendent Nobbs, my name is Merenda and I act for Constable Rolfe?---Good afternoon.

I want to start by questioning, by just focussing in on something you said earlier in relation to the chain of command. And it was something along the lines of this, "The IRT members who were deployed to Yuendumu on 9 November reported to Sergeant Frost. She reported up to you and you in turn reported it up to Assistant Commissioner Wurst?---Correct. There's a couple of links in the command chain that are missing, but by and large, in a practical application that's what it was on that particular day.

In the overall macro since that was the chain of command, if I could call it that, for the purpose of this deployment?---Correct, yes.

Now, just from where – say from the top down, Assistant Commissioner Wurst effectively gave you the approval for the SOPs to deploy the IRT general duties' police officers to Yuendumu?---In the absence of the commander where that delegation sat.

Correct. And that was for the purpose of general duties' deployment?---Correct, yes.

Now, you were then responsible for considering, curating and ultimately approving the plan as to the deployment of these officers on 9 November?---In a macro sense, yes.

Right. And I'll come back to the macro in a moment. But by and large, you did that in conjunction with Julie Frost in terms of how that plan would be effective?---Correct.

Now, it was Julie Frost's responsibility then, I take it, as the remote sergeant or sometimes referred to as the forward commander. Do you agree with that terminology?---Yes.

She, as the forward commander, was responsible if you will for the briefing and deployment of those officers on the ground on 9 November 2019, consisted of the plan in that residence that you had devised with her in the lead up to these men's deployment?---Correct, yes.

Now, in relation to that, we had some evidence recently from a commander, Meacham King, who was a member of the TRG?---Sergeant Meacham King.

Sergeant Meacham King?---Correct, yes.

Now, he agreed with that general proposition, but he also explained that Sergeant Frost would have had some discretion, obviously, but I guess whatever they agreed upon should have to follow out as a direction instruction. I just want to deal with the notion of discretion. Do you agree that Sergeant Frost would have had some discretion in terms of how this plan was effected?---Within a narrow remit, yes.

All right. So, let's just focus on that a bit more. We know for example that nobody knew where Kumanjayi Walker was at the time these men were deployed to Yuendumu. Bearing that in mind, you would agree, wouldn't you, that 5:30 am or 5 am arrest plan was to have any reality of being effectively carried out, it would have been important to ascertain the whereabouts of Kumanjayi Walker so as to enhance the ability of the IRT to complete, if you will, the overall mission - - -?--- Yeah, I gave fairly lengthy evidence-in-chief in respect to this matter. As a broad proposition, I acknowledge the necessity to have an appreciation as to where someone may be, but the evidence I provided then and which I will reassert now is that we had more than a reasonable intelligence picture as to the high probability locations the following morning.

In that context, and we've had some evidence from other witnesses in this trial, including Julie Frost. It seems to be the case across the board that no one knew the exact location of Kumanjayi Walker. So, bearing that in mind, do you think that it was within Julie Frost or in the exercise of her discretion, to task these men with effectively going out and intelligence-gathering as to his whereabouts?---No. My assessment, that's a substantive departure from the macro broader-based commander's intent.

Yes. In that context then, I take it that similar considerations arise in relation to the deployment of these men at 7 pm as opposed to 11 pm?---Correct, yes.

All right. Those things certainly weren't contemplated by you as being appropriate at the time that you effectively gave your authorisation for these men's deployment?---Nor necessary.

And that's also in the context, isn't it, where when you've given consideration to these things, there's a whole number of factors, including risk, not only to the community, but to the police officers in question as to how they will be deployed?---Correct. And that's organic.

You certainly didn't receive any request for authorisation from Julie Frost in relation to the deployment of these men for the purposes of intelligence-gathering?---No.

And you certainly didn't receive any request for approval from Julie Frost in relation to the deployment of these men at 7 pm as opposed to 11 pm?---No.

All right. You were shown some footage on the last occasion you gave evidence, and I think it would be fair to describe your reaction as one of perplexed when you saw these men, upon immediately being deployed, going to first House 577?---Fair categorisation, yes.

And the reason for that, can I suggest, is because, as you've just explained, that is totally inconsistent with what you envisaged and indeed authorised when these men were in fact authorised to go to Yuendumu on 9 November 2019?---Correct, yes.

You spoke previously, today I believe, about the nuances in terms of how the investigation was carried out?---The investigation or?

In terms – sorry, the deployment - - -?---Yes.

- - - be carried out. And that's what we see in the context of the plan. I think you described it as a short and sharp decisive set of instructions or a snapshot. Now, in terms of the nuances, I think you, on a previous occasion, described the influence of a briefing. And I think you said, "A briefing is paramount to what we do and how we do it. It's again how we then work out the sort of intricate aspects of the plan. The plan can't reasonably outline every eventuality, but there needs to be some broader consideration around sort of some of the main things that may occur." In the context where, as you've described it, this plan is effectively a snapshot, it was critical, wasn't it, that in terms of deploying these men from the Yuendumu Police Station, Julie Frost briefing with the properly set out parameters as to what these men would do and how they would do it in accordance with the mission objective of the plan, it would set out and authorise it?---Correct, it establishes the parameters and establishes an assimilation of expectations, or at least the perception and the assimilation of expectations.

And no doubt, that was Julie Frost's responsibility as the remote sergeant to make sure, in the exercise of her duties as the forward commander, that these men understood and properly applied themselves to the task that they had ahead of them in accordance with this plan?---Correct, yes.

It certainly wouldn't be appropriate, for example, for Julie Frost to have lay dormant or lay silent if she, in the context of the briefing, saw that these men were going to go, for example, directly to House 577. If she knew that that was in direct contradistinction to the plan?---Agreed.

Now, we have had some evidence in this inquest that shortly before these men were deployed, the members of the IRT and later on, Sergeant Donaldson, were in the briefing room with Sergeant Frost, and that in effect Mr Rolfe – sorry, Constable Rolfe, was conducting, if you will, a briefing as to where they would go, that is – and that he had pointed out that they would go to House 577. Now, you would expect in those circumstances where such a briefing was to be conducted, that Sergeant Frost, having known the plan, having devised the plan and having effectively understood what she needed to do as the remote sergeant in that context, if there

was to be a deviation from the plan, it was her responsibility, wasn't it, to correct?---Correct.

Now, in the context where these members of the IRT and Sergeant Donaldson were deployed, if you will, on an urgent basis, and we have some evidence that the plan itself was only sent out to the members as they were in convoy to the Yuendumu Police Station.

DR DWYER: I object to the suggestion that as to – can my learned friend clarify as to what he means by “an urgent basis”?

MR MERENDA: Well, I will clarify that.

This certainly wasn't a deployment where people had a lot of time to consider all of the relevant intricacies that go into the deployment of these people to Yuendumu?---I'm not sure I quite get what time you're referring to. So, perhaps re-ask the question. But if I interpret it insofar by my understanding, they arrived somewhere in the vicinity of 7 pm. That presents a four-hour period before the commencement of their duty, being a four hour period to work out the nuances of the framework. Am I answering you correctly, or?

Well, I'll put it this way. The plan itself was confirmed by you, but we understand that that plan was not actually afforded to the members of the IRT until they were actually travelling to Yuendumu Police Station?---Correct, because it wasn't constructed until – whilst complete – the construction of it wasn't complete until later that afternoon.

That underscores the importance of a very clear – and the laying out, if you will, of the parameters upon which these men were being deployed into that actual community?---Agreed.

Now, we know, for example, that these men were deployed with a number of instructions which seem to be inconsistently planned. One of those was that they were told to go out to the community intelligence-gathering. I've already dealt (inaudible). We also know that they were deployed some four hours prior to the time (inaudible) appropriate time for them to be deployed. In circumstances where Sergeant Frost is effectively in the room while these men are talking about what they're going to do, if they're talking about going directly to House 577, it would have been reasonable (inaudible) that as the officers who are effectively reportable to Sergeant Frost, to assume that they were saying that, and she didn't intervene to correct them, that there was no difficulty, at least from her perspective, as to them doing that?---Reasonable assumption, yes.

Now, that, I think, needs to be looked at in context of what you talked about previously. And I want to go back to how you viewed that footage in relation to these gentlemen going to House 557.

DR DWYER: I object, your Honour, on this basis. It just needs to be clarified. My learned friend – I'm slow to my feet, but my learned friend put a proposition that

Sergeant Frost told the members of the IRT that they should go out intelligence gathering, and that's not the evidence, as I understand it. The evidence is that there was suggestion from one of the members that they needed to do some intel gathering, and that she said – her response to them - please sit down, Mr Merenda, while I'm making an objection – her response to them was, "if you come across him, then, by all means, lock him up."

MR MERENDA: If a suggestion was made that these men go out to the community and intelligence gather, and Sergeant Frost didn't correct them on that, it would be fair to assume that she had no difficulty with them going out to achieve that purpose?---I accept that that could be concluded.

If these gentlemen had said they were going to go directly to House 557 in her presence, it would be fair to assume, wouldn't it, that they would have been entitled to rely on that as – it's certainly not excluding them from taking that course, and in some respects, an implied approval of them taking that action?---Potentially.

She (inaudible) sergeant, she has a responsibility for ensuring – to the extent that she can, that full compliance is made with the plan that you endorse?---Correct. However, I guess, the qualifying criteria for me – and again, I wasn't there, so I don't know and I'm not certainly privy to all the evidence that has been gleaned so far, but every participant within that plan has an obligation to that plan. So if there is evidence that they had an appreciation of the commander's intent, being the macro expectations, well, then all the police officers have an obligation to comply with that, if that makes sense.

I understand that. But I suppose in the context of this particular day, where you've got a (inaudible) in relation to what we now know is something which is completely outside of the plan, namely, the intelligence gathering, if the suggestion was made by one of the officers that they should go directly to House 557, and that wasn't, if you will, shut down, it would have been fair for these gentlemen to assume that was something that was never spoken (inaudible)?---Potentially.

Now, you've referred to the label – it has been referred to you the label of intelligence gathering (inaudible) throughout I think we've dealt with that at length in the context of your evidence and (inaudible) in response to questions from Dr Dwyer. As I apprehended your evidence, you delved into what were the three common approaches of intelligence gathering. One of those approaches was what you refer as strategic intelligence gathering?---Yes.

And in contradistinction to that, you talked about operating intelligence gathering?---Yes.

And I think you described operational intelligence gathering as being somewhat more of a slow burn?---Yes.

Now, the contradistinction there was, as I understood it, that in relation to strategic intelligence gathering, that might include, for example, going directly to the

house?---No, that was – the distinction between tactical intelligence and operational intelligence.

You're quite right. So in terms of tactical intelligence and (inaudible) up, I think the point you made was that might include, for example, going directly to a house, and figuring out who was there?---Potentially, but certainly not as a preferred course of action.

Sure. But certainly something that would fit within that remit?---Potentially.

Well, you said in your evidence, "That is where I say to someone, I need to go there right now, that house, tell me who is in there, is there any firearms, what's the antecedents of the people there, are there any children, and so on and so on"?---I don't know if I said I need to go there right now. I think what I said or certainly my intention was to say, I need to know about that house now, what is there, what is the firearms, what's access, what's egress, are their children, proximity to schools, what does lighting look like, any obstacles, what's the amenity, other environmental issues, that's the – the very, very unlikely or beneficial to physically attend to glean that information.

Right. I suppose that what I'm getting at, though, is that no matter label you put on intelligence gathering, the instructions that these men ultimately perceive is not informed, necessarily, just by a label. It's informed by all of the circumstances that are attended upon their briefing. In other words, everything that's said or not shut down, I suppose, putting it in straight terms by Sergeant Frost, was then an understanding of what it is they actually need to do when they're deployed, in this case, at 7 pm, and contrary to (inaudible) 11 pm start?---Sorry, could you repeat that proposition again? I'm sorry.

No, no, I've confused it by putting other compounds there. Everything that these men did has to be assessed, doesn't it, by reference to what actually occurred in the context of the briefings?---Correct.

So the decision to go directly to House 557, and the appropriateness of it, might not necessarily be informed by the attachment of a label. It's informed by all the circumstances of what was discussed in the context of the briefing room of Sergeant Frost?---Agree, but you've put the label on it, that in the context of it being an intelligence mission.

I apologise if I've done that. I'm just picking up and I'm trying to clarify in the context of what you said previously in evidence-in-chief about intelligence gathering, and so, do I take it you're agreeing with me that to the extent that what these men did may have at least been reasonably – whether they may have been reasonably entitled to believe is within the remit, that has to be informed by what was said in the context of the briefing?---It's formed by the brief or lack thereof, yes.

Or lack thereof?---Correct.

Now, I want to change topics and deal with the question of contamination about it, because that was something that was obviously discussed on the last occasion that you gave evidence. Do you recall that?---In which context?

Do you recall being shown a text message which I think contained the acronym IAMOP?---Yes.

And you were also asked about a gathering that occurred at Constable Rolfe's house on 11 November 2019?---Correct, yes.

And you were asked some questions about the extent to which you considered that may have been in contravention of a general order relating to deaths in custody?---Correct, yes.

And you gave some news about the appropriateness of that conduct?---Based on the hypothetical – well, not the hypothetical, the scenario as it was painted to – portrayed to me, yes.

Right. Now, one of the things you said about that was the real consequence of that is again, it's eroding community confidence, bringing the agents into disrepute, and compromising any assessment of these matters, whether it's through the coronial or the criminal lens?---Yes, and I'm not sure if that's a full picture of my – I – again, whether I convey it or intended to convey it, there's the potential and the perception surrounding that, so, yes.

And that's effectively what you said, you were talking about potentialities, because you weren't shown any evidence, for example, that would suggest that there were things discussed in the course of those events?---Correct.

And I'm referring there particularly to 11 November 2019. As I understood your evidence, it was – the fact that these officers, particularly in the circumstances where one officer may have not provided a statement, that in and of itself gave rise to a concern about those potential consequences coming about?---Correct, and apprehension on the part of the community potentially.

Now, you've served some time within the NT Police Force as a prosecutor?---Correct, yes.

And so you probably understand in addition to the responsibilities relating to the general order, that there's a real importance – and particularly in cases such as this where you have a death in custody – of ensuring that the accounts of witnesses are properly separated and are not discussed amongst witnesses?---Agreed.

And that arises not only in a criminal context, but as the case here, where her Honour has to make findings about what actually occurred, at least on 9 November 2019, that it's important that that evidence – the evidence of proof of witnesses is properly separated and not discussed among them?---Correct, yes.

In relation to this particular investigation, after 10 November 2019, (inaudible) involvement in the investigation, beyond as a witness?---No, I don't think I have, no.

So you were involved in the immediate aftermath and you made significant decisions in relation to - - -?---Correct, yes.

- - - how this tragic event was ultimately to be dealt with?---Yes.

But after that, you (inaudible) legal role was confined to one of a witness, as a person in the chain of command in the coronial investigation?---Correct, yes.

And also in the criminal investigation?---Correct, yes.

And with that, you would have understood, particularly given this was a death in custody, the chain of command was going to be a front and centre consideration for her Honour in terms of what actually happened on 9 November 2019?---Correct, yes.

What the scope of the remit was for these officers who attended on that day?---Yes.

What actually occurred with Sergeant Frost and these gentlemen when they were in the police station on 9 November 2019?---Correct, yes.

Right, and so you would have understood that not only our own evidence, but that of Sergeant Frost, would have been extremely important?---Yes.

And that it would've been very important for you to abstain having discussions with Sergeant Frost about what actually had happened on 9 November 2019?---Sorry, say that again?

You would've understood that it was important?---Yes.

To abstain having discussions with Sergeant Frost about what actually occurred on 9 November 2019?---Yes.

Because you probably understand that for all the reasons we've already gone through, that would have the effect of contaminating either directly or indirectly?---Correct.

Her evidence or your evidence?---Yes, correct.

Now, you did have some discussions with Sergeant Frost though in the month following this particular and tragic event, didn't you?---In respect to the material matters contained within this?

Well, no, I will come to that in a moment?---Okay.

Did you have some discussions with Sergeant Frost in relation to - did you firstly ask - I withdraw that. You had some discussions with Sergeant Frost in the month

following this tragic event after (inaudible)?---I had many conversations with Sergeant Frost, she's within my chain of command and an officer-in-charge of my police station.

Right, and some of those were concerned with welfare?---Predominantly, yes.

And is it the case that in December 2019 you had a discussion with Sergeant Frost where the concept of a plan (inaudible) came up and was discussed between you and Sergeant Frost?---December when, sorry?

December 2019?---I don't recall.

Now, we have a statement from Julie Frost?---Yes.

That was given on 5 December 2019?---Mm mm.

Now, the reason why I ask you that is, in the course of that statement she was asked a question about whether you had had any discussions with her around the deviation of the original plan and she said, "No we haven't, look actually I don't - just a few days ago" so I am assuming from that, given the date, it was 3 December?---Yes.

"He asked - he asked how I was going and I said, 'Look, I'm still wondering why the members did what they did', and he said, 'Yeah, I'm just sort of learning that, you know, that's - that plan was deviated so - but up until then we haven't actually had any conversations about anything at all other than what (inaudible)?---Yes, look, I'm not sure. I certainly don't recall that. So Julie is a lady of integrity and if she said that then potentially that was the case. It's - - -

And - - -?--- - - - and I sent - if I could finish?

Sure?---I sent Julie some flowers, had a conversation with her from a welfare perspective, and I recall having a conversation with Julie where, you know, I still to today haven't looked at most of the body-worn, in the interest of not contaminating my recollection of events, so I'm pretty confident - there was a clear understanding that we wouldn't talk about the material matters within that, but maybe as a throw away, there's clearly something went wrong there, I'm not too sure, but - - -

So I'll just work through that and just bear in mind I am not suggesting that you were setting out to directly interfere or contaminate Sergeant Frost's evidence?---Yes.

But accepting that this statement was made on 5 December (inaudible) talking about an incident some two days earlier?---Mm mm.

Do you accept that it's likely to be the case even though you (inaudible) with that conversation it was something that was likely to have occurred at around 3 December 2019?---You've outlined a very vague sort of proposition as I indicated, you know, if that's the advice Julie has provided contemporaneously, close to the

event then perhaps the conversation, as I just outlined, may have occurred. I don't recall it and that's all I could say I guess.

Well, just in terms of that, she says, it seems to be the case that what you're suggesting is that she raised the issue with you, "I'm still wondering why the members did what they did" to which your response is, "Yes, I'm just sort of learning that, you know that plan was deviated" so now, that's what you said (inaudible) information about the conversation which you describe?---Mm mm.

But again, without suggesting if you were direct or intentionally seeking to contaminate her evidence?---Mm mm.

You can, sir, given what you've already said in relation to all the other (inaudible) scenarios that this was something that had a real (inaudible) given that it seems to be the case of expressing disbelief about what actually happened with this plan?---Mm mm.

How that might have the capacity - bearing in mind that she hasn't finished her statement taking process?---Yes.

To have informed or potentially influenced how she went about providing her statement, whether directly or indirectly?

DR DWYER: I object. There's just another important piece of information and that is that by the time of that conversation - a couple of days past 5 December, Sergeant Frost had done a two-hour record of interview with police on 13 November - - -

MR MERENDA: I haven't suggested a breach of the general orders at all - - -

DR DWYER: 2019.

MR MERENDA: - - - I'm just asking the question in examination and I - - -

DR DWYER: And - - -

THE CORONER: And what counsel assisting is doing, as has been done on behalf of Constable Rolfe, she is pointing out that there is in existence a two-hour statement taken from Julie Frost before this conversation took place or is said to have taken place and I note that I have that lengthy interview attaching another statement on 29 November 2019, with Superintendent Nobbs which also predates this conversation.

MR MERENDA: Correct. And all I'm saying is I'm not talking about breaching of general orders with regard to the (inaudible) evidence (inaudible) seems to finally accept something which has the capacity to inform the (inaudible) of evidence and be able to accept it to the stash of evidence about ongoing investigation, certainly

not approved of by the - sorry - I meant we're at cross purposes, I hadn't suggested at all that this was a breach of general order. In any event - - -

THE CORONER: Sure, and also that we have very lengthy accounts from both witnesses that pre-date this conversation.

MR MERENDA: Well, that's certainly true. It was certainly after the (inaudible) have dealt with in detail which in some respects, the facts on the interim account (inaudible) submission.

Now, the point I was ultimately getting at is, you can appreciate that directly or indirectly these types of discussions, particularly ones where you are talking about the extent to which you don't understand how this plan deviated - how that might have formed how Julie Frost might (inaudible)?---Yes, look again, I don't recall the conversation, so you know, I'm not accepting it's occurred, as I indicated, I accept that Julie Frost has provided an account that is contemporaneous, you've provided a very vague factual narrative - or narrative there. It could have been a situation where I assessed Julie from a welfare perspective and went "Something went wrong here, what - clearly we're going to have a process to glean what that was" and I guess I have been very conscious not to - to engage in any dialogue with anyone that is of any material benefit or - - -

You certainly have and we're certainly not suggesting that you intentionally sought to contaminate evidence, as I said, but again, approaching this on behalf of even the basis that we approached every other (inaudible) situation?---Yes.

And approaching that statement on the way that I have just read it to you, it was very (inaudible). Statements of that nature have the capacity to influence and as I've said, directly or indirectly, how Julie Frost might have felt giving a further statement?--Potentially.

And because you've acknowledged the chain of command in this particular case is critical?---Yes.

It's likely to be the type of evidence that is going to be critical not only in a criminal context but also in (inaudible) context?---Yes.

When it came to the question of the deployment of these officers and the proper briefing of them, it's certainly the case, isn't it, that in terms of ensuring that these men were properly instructed consistently in the plan, the buck stopped with Frost?---Correct, yes.

I don't have any further questions, your Honour.

DR DWYER: With the remaining counsel to ask - Mr Read and we've also got Mr Suttner on the phone, so he won't be forgotten, your Honour.

MR SUTTNER: I'm sorry, your Honour, I missed what you said but you did mention me.

MR MERENDA: (Inaudible) no, that's all right, stay there.

So you were off duty when this deployment was made, is that right?---Correct, yes.

Now, when you're off-duty you do have access to a computer, do you? At home or?--I was at home. I don't think I had access to a computer, I had my phone but (inaudible) the computer.

Yes. Now, the evidence so far, and the evidence from Sergeant Furniss?---Senior Sergeant Furniss, correct.

Senior Sergeant Furniss. The effect of his evidence that the emphasis was on the arrest of Kumanjaya Walker, do you accept that?---Well, that's - I accept that that's his evidence, that's his evidence and his interpretation but it certainly wasn't the emphasis that I applied.

And indeed the decision to deploy had been made prior to any written plan they put in place, is that right?---Correct, yes.

And you did not assess this as high-risk because essentially it was a – in relation to the arrest I'm talking about – it was essentially a general duties arrest, a type of - - - ?---A routine matter, in my mind, yes.

A routine matter. If it was a high-risk assessment, then there are a lot more hoops to jump through, aren't there?---Correct, yes.

And that would mean that TRG has to be involved?---Not have to be involved but certainly be engaged, yes. Sorry, yes, yes.

And you'd have to speak to the Assistant Commissioner?---Correct, yes.

And if that occurred a detailed plan and – or justification personal plan would have to be devised, is that right?---No. So justification, yes. But the plan could still be a snap order similar to the snap order that was presented, obviously denoting it as being a high-risk as opposed to general support. And TRG would then develop further plans potentially.

Before they actually deployed?---Potentially.

Yes, that's right. In this case – and if you take it from us it would appear on what Senior Sergeant Furniss said – Sergeant McCormack was under the pump in many regards?---Yes.

That day, wasn't he?---I'm not too sure but - - -

Well he had to deal with all the alcohol shop deployments, didn't he?---Correct.  
I acknowledge there was a lot going on as is the case every day.

So your decision that it was not high-risk but it was effectively a routine arrest, vis a vis Mr Walker, is that right?---Correct.

And the one purpose of the deployment, yes?---No. The deployment had five purposes.

Yes. It was as a result of Julie Frost contacting you in relation to fatigue?---One, yes.

Property offences?---Yes.

The medical clinic?---Correct.

The arrest of Walker?---Yes.

And - - -?---Rakeisha.

And Rakeisha, of course. And Rakeisha featured very much in your mind, isn't that right?---Yes, correct.

Because you had a situation whereby, as you've given in evidence earlier today, that even when a person has finished their court obligations, the risk in the context of the family safety framework situation is that first engagement, is that right?---That's the most critical time, yes.

And you need to be careful and try and reintegrate, have safeguards, fallback situations, et cetera, is that right?---Agreed, yes.

And in this case the issues arose even more because in fact he'd absconded, cut off his bracelet and he's gone back without any supervision at all, is that right?---Correct.

And notwithstanding the fact that there was some perception that Rakeisha was on board with the deceased, you well know from those situations that one of the very problems in those sort of relationships is the volatility and how quickly things can change?---Correct, yes.

He proceeded out the shop talking to another boy?---Correct.

He could drink at the funeral, et cetera, is that right?---Yes.

So it was very much in the front of your mind, that it was necessary to get this arrest affected, is that right?---Well one of the factors, yes.

One of the factors. What – the evidence so far seems to indicate that really the first opportunity to be aware of the plan that Julie Frost put together with the assistance of Sergeant McCormack, the first opportunity for the IRT members to appreciate that was when they got to Yuendumu?---Accepted, yes.

And up until that time it was in their minds that the primary purpose was the arrest of Kumanjaji Walker?---I can't comment on that.

Well already there'd been attempts to arrest – well information in Alice Springs to go to Walpiri Camp, yes?---(No audible response).

It was on the PROMIS system that he was a priority arrest target?---Yes.

Kirstenfeldt and Rolfe had been involved in the Walpiri Camp attempt, yes?---I don't know these things. I'll accept what you're saying, if this is the evidence.

Okay. Now notwithstanding that you delegated to Julie Frost to come up with a plan, what stopped you from sending an email from your iPhone or a message to Sergeant Furniss simply on terms like this? Because this was an IRD, IRT deployment but it was on a general duties basis, wasn't it?---Yes.

One, the primary purpose of the deployment is to provide general duties support to Julie Frost at Yuendumu because – and give a reason, fatigue, clinic, break-ins, a funeral and they are to commence their duty at 11 pm. Two, the IRT and Sergeant Donaldson are to engage only in a general duties capacity. You could have done that, couldn't you?---Well in terms of your question specifically, could have I, should have I sent an email. I had a conversation with Furniss and – can I finish please?

Yes, of course?---And Sergeant McCormack, where I clearly articulated those matters and was comfortable there was a simulation of my expectation there. Should have I sent an email, perhaps, but there were – they were police officers on duty getting paid to do a job and I communicated my expectations and I expected that there was a compliance with that and there was an assimilation of what my expectations were. I wish I followed it up with an email, quite frankly, but - - -

You spoke to them on a speaker phone in a busy police station, there was a lot going on. An email set out – and I'll go through the remainder of what I might suggest?---Yes.

I'm not applying for your job. So IRT engaged only in a general duty capacity, although they take their equipment, they are only to use that equipment if the situation escalates and there is authorisation justifying its use. Because if they're just engaged or deployed in a general duties capacity, then really one wouldn't expect them to take rifles just out on – out into community, would you?---There's a lot of moving parts to your questions there. So if I answer that - - -

Well what I'm trying to say is - - -?---Well to answer that part of the question, the expectation is yes, they would. Because you don't know what's occurring. It's 370

kilometres away. The general support deployment could become something else down the track if circumstances change. So the expectation is yes, they do carry all their equipment.

They can take them up there but they only deploy the additional equipment if it's approved or authorised?---Correct, yes.

because what I'm suggesting is this. When the TRG are deployed, they're deployed in a high-risk situation and they really whenever they're deployed, they do take their gear and they are going to be either carrying it or wearing it. The IRT is quite different because they go out in two different capacities, either in the general duties capacity or their IRT capacity, that's correct?---TRG go out in two different capacities, general support and high-risk as well. So yes.

And presumably when they're going out in general support they don't take their additional equipment out?---Depends on where that general support is. If they're doing a general support operation in Darwin, perhaps they don't. I don't know, that's a question for them. But certainly if they were coming to Alice Springs for general support they would still bring their tactical equipment, again, for the obvious reasons that if something occurs that then requires an escalation of the deployment, their kit is available, it's not 1500 kilometres away.

I'll try and get to the point. The point is this. They're being deployed many hours away from Alice Springs. It would be a small thing to do at that early stage when they first meet at the police station to have a clear direction from you set out in dot point form, this is the purpose, you are only to do this. You are not to go on intelligence or active pursuit of him, because that – that might ruin the 5.30 plan, et cetera, and set it out plainly and clearly?---So I guess what you're - - -

Because - - -?---Sorry?

Because without that written document, there is room for miscommunication, and a failure of communication?---What you're – I guess I'm interpreting through your question is the proposal or expectation that I wrote the plan. That's effectively what I could glean from your questioning. And as I have indicated, I operate in a chain of command and control environment, and there were a number of police officers on duty getting paid to do a job at a particular time, and I communicated what my expectations were, and I accepted and expected there was an assimilation and compliance with those expectations. I wish, in hindsight, as – given clearly what tragically occurred, that I had documented some of these things, but I wouldn't do that as a matter of course, because I would never have any time off. I'm getting these calls quite frequently. So you expect the police officers operating under your command to do what you've conveyed.

THE CORONER: Would you accept them therefore, for example, to document what it is that you have told them, and send, you know, back an email confirming your conversation or something like that?---Potentially, your Honour. It's – yes, it's one of the processes that police do. It's one of the fundamental requirements of police, to

document the things that we are told, and requested, and whether that's notebooks or otherwise. So, again, the question is for the officers concerned, but - - -

Someone should have documented the decision to deploy, though, and what that entailed?---Correct. Well, again, they didn't get into the specifics of the deployment, but the deployment was documented. It was documented by Acting Sergeant McCormack, and then subsequently documented by Sergeant Frost, albeit within a snap order format. And the format in the order provided by Sergeant Frost, aligned broadly with my expectations.

But McCormack wasn't recording your – or documenting your conversation. He was producing a different document?---Correct. He ultimately produced an administrative aid to assist Sergeant Frost in creating the snap order. But again, any police officer or most police officers know the importance of documenting things, whether it's in a notebook or otherwise, but - - -

But where the IRT is being deployed, the initial conversation where that is communicated should be documented?---Correct, it should have been documented by me, albeit off duty at the time, in terms of what I assert I said, and equally, it should have been documented by the people on the other end of the conversation, so there's no ambiguity as to what the expectations were, but clearly we have ambiguity now.

MR MERENDA: Because in fact, you were the one that made the decision for the deployment, and you were the one that had had the discussions with Julie Frost, and indeed, your thought process is very, very clearly set out – I think it was about 90 paragraphs you set out in typed notes which were the basis for your statement, and all I'm trying to suggest is that that clarity of thought could have been set out in a very brief email or iPhone message that this is what they require, and this is why, knowing that the police station was busy on Saturday afternoon, and this is – so there can be complete clarity of the purpose for deployment on that general duties basis?---And the short answer to your question is I wish I had.

Yes. Thank you. Now, the other thing – and (inaudible) Sergeant Frost has indicated that she did say to the police officers as they left, "If you are doing intel and come across him, lock him up absolutely." Now, does a remark – and just off the bat, but does a remark like that then provide a degree of ambiguity to the operative police officers in a context where, in your mind, there's going to be a dawn arrest of this sort of – almost a throwaway line, that, well, if you come across – come across someone (inaudible) does it mean, you know, he's down at the shop, he's down at the water hole, swimming pool, is that coming across? What - - -?---Well, the only - - -

That does - - -?---It's difficult for me to definitively give any clarity to these representations from Sergeant Frost or anyone else, because I'm not a party to them.

Yes?---But to me, if you look at it through an appropriate lens, that is they shouldn't have been at work from 7 o'clock to 11, that's when they should have been formulating the – the – the intricacies of the plan. Come 11 o'clock, if there was a chance discovery, for lack of a better term, or come across them - - -

Then they're just doing their (inaudible)?---Pull over a vehicle for an RBT and there he is in the vehicle, well, then common sense would dictate, if it's safe, then we effect an arrest. That I think is the chance discovery, or if you come across him, not now let's manufacture a situation which will potentially bring about a chance discovery. That's, I guess, the only way I could broadly interpret it, being not a party to the conversation.

Yes. They are my questions, your Honour.

DR DWYER: Your Honour, there are three more counsel - - -

THE CORONER: Sorry, yes.

DR DWYER: I'm sorry, I will just indicate, just for planning purposes, because I note the time. There are three more counsel for questions, they are Mr Suttner, Ms Ozolins and Mr Hutton, and then I have some brief questions in reply.

MR FRECKELTON: No objection.

DR DWYER: I'm so sorry, Mr Freckelton of Senior Counsel. Thank you.

THE CORONER: Yes. We might go to Mr Suttner, just – because we can't see him, and I don't want to overlook him. Mr Suttner.

XXN BY MR SUTTNER:

MR SUTTNER: Your Honour, I can't hear you very well. Did you say (inaudible).

THE CORONER: Sorry. That's - - -

MR SUTTNER: Did you say you're going to me now?

THE CORONER: Yes. I was going to give you an opportunity now, Mr Suttner.

MR SUTTNER: Thank you, your Honour.

Superintendent, my name is John Suttner. I represent Sergeant Bauwens. And, I'm sorry that I'm doing it in this way. I must also apologise to you for the fact that I haven't heard very well a lot of what has transpired (inaudible), so if I repeat something that has been asked of you, please be understanding. Superintendent, first, am I correct that there is no place in the Northern Territory Police Force for racism, sexism or dishonesty?---Agreed.

And am I correct that you are absolutely firm about this?---Yes.

And if any of that conduct came to your attention, you would intervene, you would discipline the offender and there would be a record of that?---Broadly speaking, yes. I would like to think, as I said in my evidence-in-chief, that I would try to explore how or why we've got in the position that we've got to. So depending on the nature of the comment, depending on what I could glean through my inquiry, may dictate the course of action subsequently taken. But, again, that's too broad of a question.

Well, if it came to your attention and there was an offender, you would see the offender disciplined, correct?---Well, I just think I just answered that, depends on the – the nature of the comments, the circumstances gleaned from my inquiries as a result of that.

All right. But we would have a record of that. If it has occurred, you would have a record, correct?---Potentially, yes.

And when you were examined by Mr Boulten, you seemed to concede that there is racism in the Alice Springs Police Station based on your common sense because there's racism in the community, therefore there must be racism in the Alice Springs Police Station. Correct?

MR BOULTEN: I didn't ask that question and I object to this question. It's not even the effect of the evidence, your Honour.

THE WITNESS: And equally I don't think I concede - - -

MR BOULTEN: I'm objecting to the question.

THE WITNESS: Sorry.

THE CORONER: There's an objection to that, Mr Suttner. Mr Boulten's advising that he didn't ask that question, nor is that the effect of the evidence.

MR SUTTNER: All right. Well they didn't cut it short.

Can I accept that certainly in respect of Sergeant Bauwens, you have never had a complaint of racism, sexism or dishonesty, is that correct?---Correct, yes.

And you have never observed any such behaviour by him, is that correct?---Agreed, yes.

Okay. Now you spoke of the IRT having been deployed, I think you said ten times, is that correct?---I may have said ten times but I think I might have said I can't say definitively how many times, but half a dozen to ten, correct.

And they were all successful deployments?---Correct.

And in fact you wrote to Sergeant Bauwens complimenting him on the conduct of the IRT in these deployments?---I've commended them for a job well done on a number of occasions, yes.

Yes. Now you were asked about their budget . where does their budget come from?---I'm afraid I can't answer that question. That wasn't within my portfolio responsibility, so that's more appropriate question for Superintendent Vicary.

I see. Okay. Now a little area that's (inaudible) you said that – well you didn't use the word but you said that in hindsight it would have been better if you had documented exactly what the IRT should have done in Yuendumu, correct?---I simply said I wish I had and then – little question or little concern around the clear ambiguity that we have here now.

Yes. Well let me ask you this. Bearing in mind that you had in mind a 5 am invasion of a private home, exactly what would your document have said?---Well firstly I don't contend the use of the term invasion of a private home, was what my intention was. But the document would have been effectively what it was and that was what was produced by Sergeant Frost. A snap order that outlined clearly what my expectations were, constructed in a smear broad format that had some appreciation of some of the objectives inherent within the plan.

So are you saying now that Sergeant Frost's plan was adequate from your point of view?---As a mechanism to articulate the commander's intent and the broad expectations that were associated with the deployment, yes, I do concede, as I indicated in my evidence earlier, how far down the rabbit hole do you go in terms of the extra information that you could potentially incorporate within the plan. But I'll reinforce that the snap nature of the plan is that it's a short sharp decisive instrument that is designed to highlight the broad sort of macro expectations within the deployment. The nuances are built with once that the specialist team or the additional police personnel arrive on the scene, that's when they get into an operational appreciation process to start mapping out the sort of nuance and intricacies within the plan.

All right. Look, that's all a little bit above my intelligence. But if I can just get this straight. These broad strokes of the plan involve the IRT going into a private home at 5 am, is that not an invasion of a private home?---That assumes that the expectation is that they would go into the private home. The expectation was that there was a deployment to the primary house and then subsequently to the other houses at 5 am, between 5 am and 5.30 whereby through the if then planning appreciation process – the preferred course of action would be contain, knock, engage, surrender. That wouldn't have inherent in that an invasion of the premise. There's a whole multitude of options that would have occurred before what we consider being the course of last resort, which is a forced entry into a premise.

So did the plan contemplate that the IRT may have been informed that Mr Walker wasn't in the house?---Sorry, can you kindly repeat that question again.

Did the plan contemplate that the IRT may have been informed that Mr Walker wasn't in the house?---I'm afraid I still don't understand the question.

THE CORONER: Did the plan contemplate the possibility that on knocking, the IRT might be informed or whoever knocked might be informed that Mr Walker was not in the house?---Quite possibly. We had five houses. I still contend that there was a high probability and reasonable belief on my part that the most probable location at 5 am or 5.30 am would have been asleep in Mr Walker's bed – sorry, Kumanjaya Walker's bed within Kumanjaya Walker's residential address.

MR SUTTNER: All I want to know is was it contemplated that if somebody said he's not there, that the IRT would just go away?---No. And similarly in terms of the interactions the afternoon before, notwithstanding the – it wasn't permissible in terms of the time, but the manner – sorry, not the manner, but as was demonstrated, you know, you engaged the residents at a particular location. Quite often you obtain by consent – a by consent position by the residents to have a look through the house, to support their assertion that he's not there. Once we're satisfied that the house is clear, then we attend the next location and work our way through that as well. But that's the if then planning. So whilst we're establishing what our if then responses may be the afternoon before, we say if we attend this location and we knock and we have an opposition, what then. If we attend and he's not there, where to then. So that's the sort of extent of consideration that needs to be around that. But again, to – I can't simply accept that the expectations were that they would have had to forcibly enter the premise. That's potentially one scenario but a highly unlikely scenario.

And was none of that dealt with in the plan?---No. Look, you can't have a plan that covers off on every remote eventuality. I mean as in the written document.

Was none of that dealt with in the plan?---Clearly if you look – sorry, I'll start again. Clearly the plan doesn't articulate that - - -

MR FRECKELTON: I'd ask that the witness be given an opportunity by Mr Suttner, to answer the question.

THE CORONER: I know it's difficult, Mr Suttner, because you can't see. So if there's some delay you don't know why. But I think the superintendent is trying to answer that question for you.

MR SUTTNER: Okay. It appeared to me that you were trying to evade her Honour but I'll listen?---Okay. All the intricate aspects that would be gleaned through an if then appreciation thinking were not incorporated in the plan, no. The plan was a broad based blueprint to what would be occurring.

Thank you, your Honour. I have no further questions.

THE CORONER: Thanks Mr Suttner.

XXN BY MS OZOLINS:

THE CORONER: Ms Ozolins.

MS OZOLINS: Thank you, your Honour.

Superintendent, my name is Sally Ozolins and in these proceedings I'm representing the Northern Territory Police Association?---Good afternoon.

I just wanted to ask you some brief questions. The first thing was about resourcing. I understand that at the time, that is in November 2019, you were responsible for what has been referred to in these proceedings as the "relief pool"?---Yes.

Can you just explain briefly what exactly a relief pool is?---So, it was one of a number of iterations that we've had over time around trying to provide surge and respite into remote police stations. It was a cadre operating out of Alice Springs that backfilled gaps, backfilled – so gaps arising from courses, arising from illness, arising from recreational leave, but then also to fulfil the requirements across the five to six – five police posts and then to provide a surge capacity on an "as needs" basis. So, the relief pool at that point in time was anywhere between eight to 12, but I think at the relevant time, it comprised of eight people.

So, sorry, just so I've got this straight, so there were, in a given period, between eight and 12 members who were not gazetted to a particular station or operational post, if you like, and they were able to relieve in the different communities or in those different capacities that you just outlined?---Yeah, they were gazetted – I think they were gazetted to Alice Springs, but recognised that they were attached, for all intents and purposes, to my area. And it still – it was a relief pool that didn't necessarily have the same people in there, although there was some that provided continuity. It might have been some that said, well for the next three months, I'm willing and able to provide some support to my remote colleagues and we will work in - - -

Sure?---The SBRSU as it was referred to at the time.

So, the relief pool that you were in charge of that you say and I understand the variances that you've just described, so around eight to 12 members, that was just for relief in the southern region?---Yes.

Yes. And was there another relief pool that serviced more northern areas?---Not under my command.

But are you aware of whether or not those relief pool - - -?---We backfilled and assist Barkly from time to time. Again, it was under the same command, but it was a rarity. It was more within the 11 police stations that I had portfolio responsibility for.

Sure. Sorry, my question was more focussed on – there's a southern command relief pool, was there also a Top End relief pool?---I'm not sure.]

Not sure?---Sorry.

Okay. Now, we've heard some evidence in the course of the inquest about how quite often, the remote stations including Yuendumu, didn't have their full number of gazetted staff most of the time and I see you nodding?---Sorry, more common than not, yes.

More common than not, and that these relief members were often used not just for short-term relief, but might also provide a longer period of relief like you've described for rec leave or - - -?---Correct.

- - - sick leave. And is it the case that sometimes relief pool members would just go and sit in an empty gazetted position, if the gazetted position couldn't be filled, for example?---Yes.

So, as I understand the situation in Yuendumu in November 2019, not all of those members that were posted there at the time were gazetted members?---Correct.

And there's been some evidence - at least from, I think, Julie Frost and also Anne Jolley have given some evidence about there being difficulties with the number of hours that members are required to work because they're effectively on-call 24/7. And when you have those relief members, they often leave the community on their RDO's or short periods of leave and return to Alice Springs, for example?---That's not constrained to the relief members. That extends to the substantive members there as well.

Sure. So, would you agree that it is often the case that members don't get to take their RDOs?---Yeah, correct.

Yes?---So, they're effectively responding to call-outs on their RDO's, so yes.

And the most remote officers, and certainly in Yuendumu, work a significant number of overtime hours?---Correct, yes.

And in fact, in some cases where there might only be two or three members in a remote station, they can work overtime to the extent that they're essentially doubling their normal shift roster, if you like?---Not uncommon, yes.

Not uncommon. The other thing I just wanted to ask you about is, we've heard this term, and I won't take you to the documents, but that when members are posted to remote stations, there's an expectation that they will be reasonably available?---Correct, yes.

Can you just explain – well first of all what your understanding of that is and what your experience is in terms of when a member is considered to be reasonably available, or alternatively, it's reasonable for them to say they're not available?---Okay, it's – that's an industrial term. It's somewhat broad and a little bit vague, I guess. It's, I think, contained within the consent agreement. It effectively doesn't constrain police members to their police post whilst off duty, but it effectively

contends that, if they are there, they're going to be – provide themselves – that they'll be reasonably deployable on an "as needs" basis, but certainly doesn't constrain them to stay in remote communities if they've got to attend Alice Springs for, you know, certain appointments, even for just general respite and recreation.

Sure. So, in circumstances where members being reasonably available is relied on to provide the communities with the service, what's the contingency plan if members are unavailable for reasonable reasons, reasonable and allowable reasons? What's the contingency plan?---I guess there's a number of contingencies that we have in place and, you know, we have a watch commander on duty at any given time. At the time, we didn't have a TDS, but today, we have a TDS. They regulate the capability and capacity of members to respond at a particular time. If we have a situation that will exceed the capability of the particular police station because we have a number of members affording themselves the opportunity for respite and aren't deployable, well then there's opportunity to surge from Alice Springs, there's opportunity to surge from adjacent police stations. So, that's one of the contingencies. The other contingency again as a planned matter is potentially through me in my portfolio role and responsibility to oversight and regulate the welfare of members. I could send a surge deployment out through the SBRSU.

Sorry, what's the SBRSU?---That's that cadre that we're talking about.

Yes?---To backfill, as was the case on this occasion, with Alefaio and Parbs. So, that's another contingency option.

So, just on that with Alefaio and Parbs, by them coming into Yuendumu, that obviously then left their posting unattended?---Well, they didn't have a posting, per se. They were deployable on an "as needs" basis at the time they were deployed to Nyirripi, being a police post which is not a police station, which is not ordinarily filled, but it's one that we provide some support to, again, on an "as needs" basis. And in the case of Nyirripi at this particular occasion was because we had a carnival or something similar that required the police to be there. So, they weren't effectively abandoning their post, they were then redeployed for a greater more pressing need.

Sure?---Which was the support at Yuendumu.

The other thing I wanted to speak to you about and it perhaps flows from – you would have heard, we've heard evidence during this inquest and you'd no doubt be aware in any event that members, particularly those in remote stations that are working those long hours regularly report fatigue and feel stressed and things of that nature, from the nature of the work, but also the long hours and fatigue is quite a common thing, isn't it?---Far too common.

Now, you gave some evidence on the last occasion about welfare or members safeguarding themselves against stress, trauma and other matters like that, and the comment that you made was that early in your career, "Welfare support, that is was more around, the social club or social interactions or probably some unhealthy

practices around the consumption of things such as that. There's been an evolution since those early days in my career, but – so those sorts of things aren't the go to now, it's more around support services and things like that". Do you recall giving that evidence?---Correct, yes.

So what support services were you referring to?---Welfare support, chaplaincy, psychologists and psychiatrists, whether they're Northern Territory Police or outsourced to other service providers, peer support programs.

I'll come back to that if I might in a moment?---Yes.

You said welfare support services. Now the police force employs welfare officers, doesn't it?---Correct, yes.

Now is there a full-time welfare officer in Alice Springs?---At the present time?

Yes?---I'm not too sure. I'm in Nhulunbuy is where I operate at the present time, so I can't answer that question, I'm afraid.

Was there a welfare officer in November 2019?---Senior Constable Brodie Anderson(?) had that portfolio role. Whether she was there or not at the time, I'm – yes, she was. I remember briefing her when she came into the police station post the situation.

Sure?---Herself and Chaplain Rob Wheats attended the police station shortly thereafter the event.

Sure. Did you consider that that full-time welfare officer is a necessary position for members in the Alice Springs region?---Critical, yes.

And obviously the same would apply in Darwin and northern regions, that's critical for there to be a full-time welfare officer available to members?---Welfare officer or officers. It's – yes.

Sure. You also mentioned psychologists. Is there a full-time psychologist in the Alice Springs region?---I don't think so. I don't think I'm sufficiently placed to give you a firm indication on that question, again operating in Nhulunbuy at the present time.

Were you aware of whether or not there was a full-time psychologist in - - -?---I don't think there was.

- - - Alice Springs (inaudible)?---No, I think we had the chaplain.

The chaplain?---And the – and Brodie.

Do you know, having been a supervisor in the Alice Springs region for a long period of time, how members access those services?---By their own accord or through

referral. So if we have a critical incident, there's an obligation on part of myself as a line manager to submit a critical incident notification through to ESS. That then triggers some responses from ESS. But again, it's not uncommon for members of their own accord to reach out.

Now you've previously given some evidence or acknowledging that the events in 2019 had a deep impact on everyone in the Alice Springs area, obviously including you. In your opinion, back in 2019 in November immediately following this critical incident, were there sufficient support services available to members in Alice Springs?---I honestly can't recall, I'm sorry. I do know that we had a rotation of welfare support here down from Darwin for a period of time. How long that was I'm not too sure. I was quite regularly, as a participant within this matter, receiving calls from psychologists and ESS representatives doing well checks on me. As a manager I was doing well checks on my people. So - - -

Did you refer anybody – we're just talking about having an obligation following a critical incident to refer members, your subordinate members. Do you recall referring anybody post 9 November 2019 for welfare support?---Sorry, Senior Constable Smith and Hand were referred arising from the – what's commonly referred to as the axe incident. I don't think we made any formal referrals – and again, I can't answer the question definitively. I don't think I did but I think it was because there was so much wrap around from ESS at that point in time that it was assumed by me that everyone was sufficiently captured.

And just one final thing on that. Are you aware of any debrief that occurred with any of the members following the 9 November 2019 matter?---No. And as I expressed in my evidence-in-chief, that's something that I've genuinely struggled with and continue to today three years on. Not acknowledging or certainly not saying that I don't acknowledge the complexities around undertaking such a thing but I've found the fact that it's taken almost three years for me to have some answers, in my mind, in terms of some of the factors that has been really hard for me to take.

Sure. The last thing I wanted to ask you about and I won't go over and over it because certainly Mr O'Neill took you through the general order in relation to executing warrants. But I just wondered if you could clarify. On the last occasion when you gave some evidence, you agreed with certain propositions put in relation to whether or not officers had a discretion in relation to arresting where there was a warrant in existence. And specifically one of the propositions put to you was, "Even if it's not technically allowed under the legislation there's still room for common-sense and cultural sensitivity, isn't there" and you said, "Yeah, correct". You then went on before and after that proposition to indicate, certainly on my reading of your evidence anyway, that there is no discretion for members when they're faced with a person who they know has a warrant. And I just wondered if you could first of all, clarify what the position is; and secondly, how members – how the clear message is given to members in relation to whether or not they have a discretion?

MR FRECKELTON: Well your Honour, the witness can of course continue to give his opinion about five grams. It's a legal issue that the court will determine based on your understanding of the law.

THE CORONER: Sure. I guess perhaps Ms Ozolins is concerned with what the police understand the position to be.

MS OZOLINS: Perhaps I'll approach it a different way.

Superintendent, you'd agree that the police organisation is one which relies on subordinate members being given and following clear directions and orders?---Correct, yes.

And there's an obligation for members of the police force to follow directions and orders given to them by superior officers?---Correct, yes.

And they are obliged to follow general orders issued by the Commissioner or properly delegated person in relation to how they discharge their duties?---Correct, yes.

And we've heard evidence – I wasn't going to go back over it all in great detail – but we've seen that there is in fact a general order which dictates that members don't have a discretion when effecting an arrest on a warrant?---Agreed, yes.

I just wanted some clarification of your evidence as a superintendent who clearly gives directions and orders to subordinate officers, your evidence in some parts was that there might be room for discretion and in other parts of your evidence you acknowledged that in general orders sets out there is no discretion?---Yeah. Look, your former question I can't recall my evidence specifically but I accept what you're saying is the – is indicated within the transcript. But I certainly don't recall that and certainly wasn't my intention to convey that. There is no discretion, notwithstanding I took discretion contrary to the explicit instructions. And I took discretion through the lens of applying a common-sense culturally sensitive response. Very similarly – and although probably more liberally than reasonable or appropriate in the circumstance – but through the scenario that was put to me earlier, notwithstanding the determination within the general order, quite clearly we would exercise discretion and not immediately act if there was a safety issue. So I guess whilst it's explicit, in my mind, common-sense should dictate there is still some flexibility around that.

And do you see that as being the case for members of all ranks? Would you expect a probationary constable to exercise a discretion in the same way that you might as an experienced superintendent?---Yes. What I would expect is that the policy and statutory framework is addressed in the interests of ensuring that there's no ambiguity. That's what I would expect, I guess. But I would encourage and consider it appropriate for any police officer of any rank to apply common sense with safety as their paramount consideration when interpreting any general order, notwithstanding the explicit nature contained within that general order.

There's a risk, isn't there, you just said it's an explicit general order, so there's a real risk that an officer who seeks to exercise a discretion which is contrary to an express provision in a general order is at risk of - - -?---Agreed.

- - - criticism, disciplinary action and things of that nature?---Agreed.

So you'd agree then that the general order needs to set out very clearly what the obligations are and in the absence of any discretion included in the general order, that the officer is obliged to follow the general order?--Agreed, yes.

Yes, they are all my questions, thank you. Thank you Superintendent?---Thank you.

THE CORONER: Yes, Mr Hutton?

MR HUTTON: Thank you, your Honour. I note the time, would it be convenient to have the afternoon break or would you like me to - - -

THE CORONER: How long are you going to be, Mr Hutton?

MR HUTTON: I think about 15 minutes, your Honour.

DR DWYER: And then we have Dr Freckelton, your Honour.

THE CORONER: Yes. Look, I think we will take your 15 minutes and then we'll have a quick break and see how we go.

MR HUTTON: May it please the court.

Superintendent Nobbs, my name is Hutton and I appear on behalf of (inaudible). In early November 2019 there was an escalation of incidents of property crime at the nurse's accommodation in Yuendumu, is that correct?---I was only aware of an escalation in property crime on the morning of the 9th, was when it was conveyed to me and I had the impression that was relative to the night before.

You became aware of it on the morning of 9 November?---Correct, yes.

You weren't aware of the - and there had been incidents on the previous days?---I wasn't aware of that, no.

All right?---I may have been - I don't think I was aware of that, but.

Perhaps I can summarise the evidence before her Honour, and you can tell us if you're aware of it. On 6 November the manager's house had been broken into. On 7 November the clinic manager's car had been broken into. On 8 November there were attempted break-ins at the clinic manager's house and at three other separate nurse accommodation and there were also break-ins to two clinic cars, on a personal care of the midwife and the clinic car as well. Were you aware of that?---I can't recall

but I accept that it was more than likely brought to my attention if that was the state of play at the time.

All right, and were you aware that weapons including pick axes and shovels had been found at one of the properties?---No.

Were you aware that a hole had been smashed into a gyprock roof on one of the properties?---Again, I can't recall it. I don't think so.

And the evidence before the Honour is that at three of the four properties that there were attempted break-ins on 8 November the nurses were home and they were present in their accommodation that evening and home invasions or attempted break-ins when the person is home, that presents a particular risk to the safety of the person in the home, do you agree with that?---Agreed, yes.

But why is that Superintendent?---Well, I guess it presents a heightened sense of - that there'll be an interaction between the offender and the victim and what I know, based on my experience is it's unpredictable in terms - as in terms of what an offender may do when he is observed in - sorry - when they are observed engaged in their conduct equally. Firstly, similarly for a victim, particularly a vulnerable victim in terms of what they may or may not do when fronted with an offender within their premises at that point in time.

Thank you. Following the axe incident involving Kumanjaya on 6 November, did you have a discussion with Sergeant Frost that evening, is that correct?---Correct, yes.

And I understand part of that discussion was to confirm the welfare of the members involved in the incident?---Correct, yes.

And Sergeant Frost's evidence was that she discussed the need for additional resources with you that evening, and I will read to you her evidence;

"I contacted Superintendent Nobbs to let him know of the serious incident and to let him know that I would be seeking resources from town and this is the reason why, um, and I told - obviously told him, I then put on a management significant case note entry with regards to what happened. I also put on an alert on his name as an alert for to be arrested and in case he went back to town."

That's at 7-36 in the brief. Do you recall, Superintendent, discussing additional resources that evening with Sergeant Frost?---No, I think the conversation in terms of additional resources was the following morning, but I acknowledge if that's Julie's recollection then so be it, but my recollection is - - -

The following morning?---The following morning, correct.

Her recollection of the Wednesday night discussion was that it involved the IRT in particular. That's not something that you recall?---No.

The following morning at 8:15 am, that's on 7 November, Commander Currie sent an email to Assistant Commissioner Wurst, Acting Deputy Commissioner Beer and to Ms Lauren Wetherall and you weren't a party to this email. The email reads;

"FYI, I've spoken to the OIC, Sergeant Julie Frost to confirm the welfare of our members. They are a little shaken by the incident. I am advised the footage is confronting. Superintendent Nobbs will confirm welfare again today of the members and will monitor situation and consider additional resources et cetera and in community negotiations."

That's an email correspondence involving various senior members of the Northern Territory Police?---Correct, yes.

Is the reason for the seniority level of those members because of the seriousness of the incident the night before?

MR BOULTON: I object. It's not a matter for this witness to comment on why the communications took place or to whom.

THE CORONER: He might know though. I mean he might know because of practice and procedure.

MR BOULTON: (Inaudible).

THE CORONER: I will allow the question, Mr Hutton.

MR HUTTON: Thank you, your Honour?---What I could say as a matter of course, given the nature of the incident that occurred the night before is that I would have come in to work and I'm not saying categorically here, this is a broad proposition but I would have brought to Commander Currie's attention the nature of the event the night before if he wasn't already aware of it. I would have given him some assurance around what my immediate short time and medium term response to the matter would have been and I would have conveyed to him, to give him some comfort, that I will continue to monitor the matter, going forward and I would appraise him of any matters of any material benefit throughout the course of my response and then I presume, given that's my obligation to him, he would have then, in turn, discharge his obligation by reporting that up as well.

Thank you. Did you discuss with Commander Currie what additional resources may be necessary at that time?---Not at this stage because the subsequent conversations with Sergeant Frost then turned towards the plan around the surrender plan - the funeral and the surrender plan.

Had you, yourself, considered the day after the axe incident that additional resources may be necessary?---I'm not sure if I did or I didn't.

And based on the information you had at the time, the following morning, would you have considered the deployment of the IRT maybe one appropriate response?  
---Potentially it could have been an appropriate response but the conversations I had with Sergeant Frost throughout the next morning were constructive and optimistic in terms of the likelihood, based on here interactions with Mr Robertson, the Kumanjayi Walker would surrender, so reducing the need for additional police officers to be deployed.

All right, so the discussion with Sergeant Frost the following day was that - to the effect that she was optimistic?---We collectively were optimistic. It turned towards the existence of the funeral, the fact that it was accepted by us that Kumanjayi Walker was predominantly in the community to participate in cultural matters. And it was our position to, notwithstanding the absence of discretion, to put the faith in Mr Robertson to bring Kumanjayi Walker to the police station pursuant to the surrender plan.

Did you discuss if that optimism had been misplaced, what resources would be necessary?---So we discussed the – so the funeral originally was on the Friday and we had the conversation on the Thursday and were hopeful, although didn't necessarily expect it to have occurred given the – obviously the funeral hadn't occurred at this stage. Then on the Friday we revisited the conversation and during that time Sergeant Frost indicated that Mr Walker was still at large. The funeral had been postponed to the Saturday. We were still optimistic. And agreed after a backwards and forwards quite robustly, that we would honour our commitment to Eddy Robertson. Again, optimistic that after the funeral he would be brought to the police station.

Do you remember discussing what resources would be deployed in particular in the event that Kumanjayi was not brought in by Mr Robertson?---Again, not at this time, no.

Not at this time?---By my recollection.

On the morning of 9 November – and you had another discussion with Sergeant Frost?---Correct, yes.

Her evidence to the Coroner has been that in addition to the fact that Kumanjayi had not been arrested and she was concerned about the potential for antisocial behaviour after the funeral. Do you recall discussing that with - - -?---Correct. So I guess circumstances changed substantially from the Friday conversation to the Saturday conversation. And that's where I guess we refocused on, and recognised the necessity to provide a surge capability out there. Although still optimistic and hopeful around the surrender plan.

After your discussion with Sergeant Frost on the Saturday morning, you discussed what the capability or additional resources were with Watch Commander Furniss in Alice Springs?---Correct, yes.

And specifically you requested the four IRT members, one dog handler and a drone operator be deployed?---Correct, yes.

And the dog and dog handler were identified on accounts of if Kumanjayi might seek to run and evade arrest?---Correct, as you know – to provide that utility value but also the deterrent benefits associated with the dog being an effective apparatus within a remote Indigenous community.

And as I recall your evidence at your previous appearance, the drone was similarly useful as an eye in the sky in the event that Kumanjayi attempted to evade arrest?---Correct, although it wasn't available for deployment.

And the IRT members were considered to be appropriate because they could be deployed quickly?---Correct.

And also because you believed that they are highly trained, although we've heard this afternoon there are some limitations to your knowledge about the specifics of that training?---Correct. So every time I've deployed them in the past I've called their coordinator and have always had a deployment team identified fairly swiftly. So – and it's not, I guess, just the availability but as you've discussed, the perceptions around training and capability, but also the fact that there was a heightened degree of training and it was a cadre workforce that had worked together quite frequently in similar sorts of matters.

Was the training that you had in mind that it would be of assistance to the IRT in relation to the arrest of Kumanjayi?---Sorry?

Was the training that you had in mind, their additional training that they had completed, was that specific to the arrest of Kumanjayi?---Potentially.

And were you aware of any other training that they completed that might be of assistance?---Look, I knew they had close personal – close quarters tactics training, you know. It was more about the fact that they were a workforce that have repeatedly worked together on a number of occasions. And whilst this was a routine matter in my mind, there was an increased level of risk associated with it, given the circumstances that occurred on - - -

On 6 November?---Correct.

Am I correct to say there are also resourcing constraints on your ability to send other general duties police?---Not necessarily so. The IRT are on, you know, day to day, seven days a week, are general duties police officers. So I engaged Superintendent Vicary and told her that day that as a courtesy that I intended to take four or five – sorry, four of her police officers that would impact general duties capability. But had I said that they weren't IRT and they were just going to be general duties police officer, I'm sure her response would have been the same. That is, yes, it will have an impact on our frontline, however, the greater needs – there's an acknowledgment of the greater needs and she would have been amenable to the deployment.

After receiving Assistant Commissioner Wurst's approval for the deployment, you tasked Acting Sergeant McCormack with providing an administrative order. You've been taken to that administrative order today. This was done by way of an email, subject line, "IRT call out arrest of violent offender" and then Kumanjaya before three dot points. And the first of those reads, "Kumanjaya is an active target for a breach of suspended sentence" and then provides a number, which in this instance is 918486. That's a PROMIS number, is it?---No – yes, sorry, that's a PROMIS number.

And that's provided so that the recipients of this document can find out further information if they wish to do so?---Correct, yes.

So that's the reason for the second number as well and the next dot point?---Correct, yes.

Thank you. Can I ask you then about your telephone call with Helen Gill?---Yes.

That occurred at approximately 2.28 pm on the afternoon of 9 November 2019?---I'm not exactly sure of the time but certainly it was in the afternoon, yes.

That time comes from a note that Ms Gill took?---Okay.

You didn't take any notes at the time of this conversation?---No.

Do you recall during that conversation with Ms Gill that she told you about the break-ins that had occurred over the previous few days?---Yes.

And that consequently staff were not feeling safe?---Correct, yes.

Do you recall that Ms Gill told you that there were concerns regarding bad ganja in Yuendumu at that time?---I don't recall that, no.

All right?---But it could have – she could have said that.

Do you recall that Ms Gill referred to the funeral that was occurring at Yuendumu and told you that some of the nurses would remain in the community to allow the release of (inaudible)?---No.

Don't recall?---I don't think that occurred, no.

Ms Gill's evidence was that you did not request that a decision to withdraw the staff from Yuendumu before the weekend be reconsidered and rather her evidence was that you sounded sympathetic to the difficulties that the staff were then facing in Yuendumu?---I was sympathetic to the difficulties they had been facing but certainly I've got a very firm recollection of the conversation and specifically I said to Ms Gill that this is unacceptable risk that I don't support and I said notwithstanding I'm happy to work with you and your team on Monday to see how we could reintegrate you

back into the community but there's an unacceptable risk that's not supported by police.

Ms Gill's evidence was that you also told her that police were sending a tactical team as well as a police dog squad to detain a person of interest. Do you recall saying that to Ms Gill?---I said that we were bringing additional police officers out. I probably said they were tactical. I certainly said – I probably said there was a dog also. But it was certainly more about trying to influence her. It was about an appeal to say, "We're going to have additional police on tonight, they're going to be providing high visibility patrolling, I could give you as best I can some assurances that you'll be safe tonight." And that then was the precursor to, "I'm encouraging you to stay, it's unacceptable risks that is going and so that won't be supported."

And finally Superintendent putting Yuendumu aside, have you been involved in the deployment of the IRT to another remote community following the withdrawal of the health service?---I don't think so but I'm not sure. I don't think so, short answer.

THE CORONER: Thank you, we'll take the afternoon adjournment.

ADJOURNED

## RESUMED

THE CORONER: Dr Freckelton.

MR FRECKELTON: Thank you, your Honour.

JODY NOBBS:

XXN BY MR FRECKELTON:

MR FRECKELTON: Superintendent, I would like to ask you a handful of questions about the discretion to arrest. Kumanjayi – a warrant to arrest Kumanjayi had been issued by a judge as a result of his breach of a suspended sentence. Is that your understanding?---Yes, it is, your Honour.

In addition, of course, he'd committed a serious assault offence on the Wednesday?---Allegedly, yes.

Is it reasonable to characterise both of those matters as serious?---Yes, your Honour.

And is your evidence to the court that your understanding is that when an arrest warrant is issued by a judge, it needs to be operationalised with some expedition?---Correct. That is my understanding, yes, your Honour.

But inevitably, in respect to either of those matters, there is some measure of discretion?---I don't know if there is a measure of discretion.

Not a discretion as to whether to enforce, but a discretion as to when to enforce and how to enforce?---I'm not sure as to whether that's the case. It's – I don't know if there is a discretion as to when to enforce. My understanding is that there is no discretion, notwithstanding, I exercise a discretion, your Honour.

Let's work it through together. Upon a police officer – not you, not anyone in particular, receives notice that the judge has issued an arrest warrant, they will have a variety of things to do and the mere issuing of an arrest warrant does not mean that they have to drop absolutely everything else that they're doing and go and execute it immediately, does it?---Agreed, yes.

All right. So, there's obviously some latitude in terms of the timing of enforcement?---On that basis, yes, your Honour.

And a variety of matters that you have already identified impact upon common everyday exercise as to prioritisation?---Agreed, yes.

And they're rather issues of just ordinary humanity and common-sense which intrude as well as to when it should be enforced?---Agreed.

And is your position to her Honour that one of the relevant factors as to the timing of execution of an arrest warrant is taking into account cultural sensitivities such as what appears to be a person's earnest desire to attend a funeral of a loved one?---It certainly was a matter that loomed large for me at the time, your Honour, yes.

All right. So, you make no criticism of Julie Frost or any of those answering to her for extending some latitude as to when Kumanjayi should be arrested after the 6th?---No criticism, in fact, it was a – I won't say a direction, but certainly an endorsement I provided and I guess an articulation of my expectation, although I don't think I needed to articulate it as an expectation, but yes.

But nonetheless, it was something that was discussed between you and her?---Agreed, yes, your Honour.

Were you aware that initially on the Wednesday, the communication was given to Eddy and Lottie that they should use their best efforts to encourage Kumanjayi to hand himself in within two hours?---I'm not sure if that was my understanding at the time. I accept that that has been evidence provided in this inquest, but I'm not sure if I had a recollection of that at the time.

But again, you would view that as a reasonable communication to those whom Kumanjayi trusted on the same day as his behaviour in relation to the axe?---Certainly, yes, your Honour.

And so that should, assuming that the information or the message got through to him, they've communicated that it was the serious wish of the police that he hand himself into custody as soon as he reasonably could?---Clearly, our expectation, yes.

Then the next morning, there was a further discussion of which you are aware. Is that right?---Yes.

And that was that he hand himself in after the funeral which, at that time, was scheduled for the Friday?---Correct, yes.

All right. And again, that being the Thursday and the funeral being on the Friday, do you regard that as a reasonable measure of latitude taking into account cultural sensitivities?---Yes and that's why I agreed to that.

Right. And then, of course, the funeral was postponed to the Saturday, to your knowledge?---Correct, yes.

And was your expectation that given that the discussion had been after the funeral that that meant he should hand himself in immediately after the funeral which was to take place on the Saturday?---That was my clear expectations, yes.

You spoke earlier today to her Honour about drawing a line in the sand, namely that this couldn't be put off forever, the arrest plan?---Correct, yes, agreed.

Yes. And so, did you regard the requirement that he hand himself in, for instance, late Saturday after most of the business associated with the funeral was completed as a reasonable one?---Inherent in the plan was, I guess, the latitude that had he handed himself in any time before 5 am the following morning, then I guess that was – they were afforded that opportunity by virtue of the plan.

And again, with time to think about it over the intervening years, do you regard that still as a reasonable compromise?---It was - as I indicated before, the competing and balancing risk and the organic risk assessment in my mind meant that I had to draw an arbitrary line in the sand as to that I wasn't going to delay it for another day or another two days or another week. And I maintain that that was a reasonable position in the circumstances.

Did Sergeant Frost or anyone else communicate to you on the Thursday, Friday or Saturday a degree of pessimism about whether Kumanjayi was actually going to cooperate with the latitude that was being extended to him?---I'm not sure.

If you don't recall - - -?---I don't recall definitively. I think the first day we were somewhat optimistic, whether that wanned over the next days, I'm not sure. But again, the funeral was to occur later so – yes.

Yes. And there were a variety of sorry business activities associated with the day on which he was to be interred in the ground?---Sorry, can you repeat the question?

There were a variety of other activities at Yuendumu associated with the funeral on the Saturday?---Correct.

Is that how you understood it?---Yes.

And is that the normal practice to your knowledge - - -?---Yes.

- - - at Warlpiri funerals?---Correct, yes.

And so, if he was to hand himself in late on a Saturday or early on the Sunday, was it your expectation that that would have afford him the opportunity to have substantial participation in the sorry business associated with the burial in the ground?---Correct. And it would have also afforded the opportunity that we were obliged to do to refer the matter to a magistrate to make an assessment as to whether Kumanjayi Walker continues to participate in the cultural matters.

Yes. I would like to move now to the arrangements for the attendance by IRT members and the dog handler at Yuendumu. At 4:24 on the afternoon of the 9th, there was the communication to which you've referred by Sergeant McCormack to Sergeant Frost. Is that right?---Correct, yes.

And if I were to characterise that to you as the provision of logistical information to Sergeant Frost to enable her to formulate an arrest plan, would that be a fair characterisation?---Yeah, correct. It was to provide the pertinent administrative

information to assist Sergeant Frost's development of the plan. So, it was an aide-memoire for that purpose, I guess.

And you were copied in at the time to that communication from Sergeant McCormack to Sergeant Frost, were you not?---Correct, yes.

Is it fair to assume that you didn't scrutinise that particular? your interest was more in the actual arrest?---Correct, yes.

And at 4:49 Sergeant Frost communicated to you a draft of that arrest plan, did she not?---Yes, correct, your Honour.

You then straight afterwards had a telephone call with Sergeant Frost?---Correct, yes.

And should her Honour assume that you discussed the content of that arrest plan with Sergeant Frost?---Correct, yes.

And is it broadly right that you were content with her draft because it attended to the essence of what you wanted in terms of the involvement of the IRT at Yuendumu?---Yes, as a macro blueprint, as a broad-based blueprint, yes.

Did you raise anything further with her or ask for any significant amendments to her draft plan?---No.

All right. And then Sergeant Frost emailed that plan at 4:59 of that same afternoon, after the conversation with you, is that right?---Yes, your Honour.

And you're quite well familiar with that 4:59 communication, are you not?---Yes.

And you were again copied into it as was Superintendent Vicary and a variety of other senior personnel including - - -?---No, the Territory duty officer. We didn't have a Territory duty superintendent framework in place at that time.

I'll tell you why I said that to you. Do you have a copy of that in front of you?---Yes, I do.

The plan, because you'll see that in one of the CC's there are the Territory duty superintendents?---I'm afraid I don't have the subsequent - but I accept it may have been sent to the Territory duty superintendent, a generic email address, but that wasn't attached to a functioning unit at the time, your Honour.

That's fine, thank you. all right. You've been asked about the purposes of the document and it's been characterised differently by different people. You've tended to call it a snap order, is that right?---Yes, that's my term.

Is that because it wasn't - it didn't meet the requirements for a formal operations order?---Well, it's - - -

Which is a more extensive kind of a document?---Correct, yes.

And there's no formal designation of an arrest plan either but the essence of this was an arrest plan plus other instructions?---I'm sorry, I'm afraid I don't understand the question.

That's all right. Let's go through it together. What - how would you - you've described a snap order as a short, sharp, decisive plan, is that right?---Yes.

A broad-based blueprint of what was to happen upon the arrival of the IRT at Yuendumu?---Correct, yes.

All right. Having regard even to the heading, namely, that which is above "Situation" did it have two components essentially to it to arrest Kumanjaya and transport him back to Alice Springs, first up?

THE CORONER: So this is under "Task."

MR FRECKELTON: That's the - that's it. Do you have that, a copy of it?---Yes, I'm - yes.

So just under "Good afternoon all"?---Yes.

You see that? So the first part is to arrest Kumanjaya and transport him back to Alice Springs, do you see that?---Correct, yes.

That was certainly one of the intentions, was it not?---Yes.

And then just read out to her Honour the second apparent intention?---"Provide a local presence of armed police to uphold the law in the - and order in the community and provide support to local members."

Did that second component represent correctly your intention for the deployment of the IRT members?---In a generalised sense, yes. It could have been articulated better than that but certainly in a generalised sense. It denotes the respite elements and it denotes community confidence.

Yes. Is this the situation? You were conscious first that the members of Yuendumu were fatigued by reason of the various demands which - to which they'd been subject in the preceding days?---Correct, your Honour, yes.

And certain of the police officers at Yuendumu had then applied for duties elsewhere including I think at Nyirripi?---Agreed, yes.

And there were also some particular issues which had been arising in the days before this, correct?---Yes.

There'd been a property crime which Mr Hutton has raised with you in relation to the nurses?---Agreed. Whilst I wasn't aware of the - how long it had occurred for I was certainly aware of instances of property crime, yes.

Yes. You were aware that the nurses had left the medical clinic leaving difficulties in terms of recourse to health services for the community?---Had left or were leaving and I accepted Sergeant Frost's concern that the impacts that would have on police and the expectations, correct, yes.

Yes. So it had two components. One it could leave some difficulties for persons to access health services promptly but it could also have an impact upon the police resources to bring - or accompany nurses back into Yuendumu?---Agreed, your Honour, yes.

In addition there had been the need for police at Nyirripi in - during a carnival and some unrest there in the days before?---Agreed, yes.

And persons were coming back for the funeral from Nyirripi and other places with the potential for that law and order difficulty to spread to Yuendumu?---Correct, yes.

Further, in the context of the funeral it was quite possible that alcohol and ganja might be consumed with some law and order difficulties in Yuendumu?---Unfortunately that is a relatively common occurrence for matters such as a funeral or the like, yes.

And as you've described to her Honour you had some concerns in relation to the wellbeing of Rakeisha given the trio of orders which you've described today that had been taken out not at her request but on - to promote some safety for her?---Coupled with the actual history of violence and the anecdotal information around the under-reporting of violence, yes.

So a variety of issues arising for persons within the Yuendumu community and then there was the (inaudible) to arrest Kumanjayi?---Yes.

And the arrest of Kumanjayi was not in the context of his being a high-risk offender but in the context of his having behaved in a threatening way three days before and the fact that he was known to try to avoid arrest by running away?---Correct, yes.

So a combination then of law and order challenges in the community and the need to arrest someone who while not a high-risk offender posed some elevated risk if not carefully handled?---That was my contention at the time, yes.

Now, I'd like to identify with you, Superintendent, if I could, please, the key elements then of this - let's call it - let's use your wording, of the snap order. Just going through it then there's some background information provided in it about Kumanjayi, what he'd done and what had happened a few days before, is that right?---Correct, yes.

Then there are some photographs of him to aid in identification of him?---Yes, your Honour.

There's reference to - of the existence of a variety of alerts in respect of him and that's the part that's in red?---Correct, highlighted in red, yes.

Again would you say that that's appropriate in terms of promoting guidance to the IRT team members for how they went about the arrest process?---Correct. It provides guidance, yes.

Yes. Now, then a plan which is divided into two days, isn't there?---Yes, correct, your Honour.

Now, the first one refers to the IRT commencing at 11 o'clock in the evening, duty and conducting high-visibility patrols and responding to callouts. Do you see that?---Yes, I do.

Again, was that meeting your wish that there be an overt presence so as to deal with any difficulties that might be emerging in the community given the funeral, the break-ins, the influx of people from Nyirripi where there'd been some problems in the days before?---Correct. Coupled with highly visible deterrent value, community reassurance benefits, your Honour.

And likewise there was the potential, was there not, for there to be call outs because some difficulties might erupt and the emotional atmosphere of the funeral?---Correct, yes.

And likewise there was some potential for someone to become unwell and the need for the nurses to be brought back and if they wanted that to occur only in the presence of police?---Yes, so acknowledged there was a contingency plan from Yuelamu. I didn't agree with the notion that police would escort nurses to call outs but there was some concessions made around that.

Yes. Now the timing of the commencement of IRT duty is stipulated there as 11 pm?---Correct, yes.

Sergeant Frost gave evidence at the committal that the issue of their starting time was raised by members of the IRT and that it was her suggestion that they be able to get some rest and commence duty after having some rest. Again, does that make sense in terms of reasonable allocation of responsibilities to people who had already had to travel several hours to Yuendumu?---Correct, yes.

And she said at the committal it's going to be a long night for you. Again, do you accept that proposition?---Acknowledged, yes. Thank you.

She informed the judge at the committal that the members of the IRT said that they were happy to start straight away and that she acquiesced in that. Is that something

you knew before today?---I've gleaned it through these proceedings but not at the relevant time, no.

Now there are core components to this plan, I'd suggest to you and then there are parts which are not absolutely central to it. Is that fair?---Yes.

If there was negotiation between Sergeant Frost and the members of the IRT about the timing of their starting duty and conducting high visibility patrols and responding to call outs, is that a sort of area of a plan that was open to negotiation between Sergeant Frost and the men?---Well it's always open to negotiation I guess, insofar as they certainly could have the conversation. But it's a material deviation to the plan and I would have anticipated that any negotiation and a consensus reached there would have then been communicated to me to assess.

Was it within the realm of discretion for Sergeant Frost to authorise the men starting a bit earlier so that she could immediately get some rest and so that they could start doing what you actually both wanted them to do, namely high visibility patrolling?--- Look, we're talking 15 minutes early, probably discretionary. But four – sorry, four hours earlier in daylight, no.

You would want to be informed of that proposal?---That's a material change.

Let's – now that's all that is identified as their role on day one. And then there is the Sunday and that involves a dog handler and Constable Alefaio from Yuendumu starting duty at 5 am along with the IRT members to effect the arrest of Kumanjayi. You see that?---Acknowledged, yes.

Now is that a core part of the plan or is that open to negotiation?---That's a core part of the plan.

Is that a core part of the plan because it is a proposed mechanism of arrest early in the morning to minimise the potential for repetition of the problems that had been experienced on the evening of the Wednesday?---Correct. It's a tried and tested mechanism to conduct an arrest that's similarly circumstanced to this matter.

And did you regard that as fundamental to the minimal use of force and the safety of all involved including Kumanjayi?---Correct, yes.

And if there was to be any deviation from that, regardless of the 11 o'clock start, would you have expected to be informed of that?---Correct, but for the chance discovery, the scenario I outlined earlier around a traffic apprehension or - - -

Yes. And in those circumstances – and Sergeant Frost has described this to her Honour – if they came across him and it was safe to take him into custody straight away, they should do just that?---Correct, yes.

And then there's a section starting in red as to what they should do if they were able to arrest Kumanjayi?---Yes.

And he's being taken back to Alice Springs, yes?---Yes, correct.

There's also a contingency if there is persistence of fatigue levels. Is that an important part for a plan as well?---Correct, yes.

And this is again referring to the Sunday?---Yes.

And in short with the next dash point, the plan was for the two remaining IRT members, namely the two who were not conveying him to Alice Springs, to remain in Yuendumu and to continue to provide high visibility patrols as well as on call duties between the hours of 11:00 in the evening and 7:00 in the morning?---Correct, yes.

And again, that was part of your plan to try to provide some recovery time for the overstretched members at Yuendumu?---Our plan, yes.

Yours and Sergeant Frost's?---Correct, yes.

And there was specific provision should the arrest not work out at around 5 o'clock on the Sunday morning, namely that the same plan be implemented the next day?---Correct. Yes, your Honour.

And the arrangements in respect of that were a mirror of what was proposed for the first day?---Correct. Yes, your Honour.

And if there was no arrest at that stage, one can see at the bottom of the Monday 11 November entry in red, there was to be liaison with yourself and Superintendent Vicary as to what to do next?---Yes, correct, your Honour.

And there were a variety of circumstances in which an arrest on either the Sunday morning or the Monday morning might not prove feasible. For instance, Kumanjaji might have left Yuendumu?---Correct, yes.

And there were locations of interest which were identified in the plan?---Yes.

The first of them being the place where he had been arrested before and where the Wednesday incident had taken place and where he normally resided when he was in Yuendumu, is that right?---Yes, your Honour.

But there was recognition that for one reason or another he might be at another residence and those were identified there?---Yes, your Honour.

Now sir, you have been shown the footage during her Honour's hearing which shows in short that the four IRT men and the dog handler left the premises of the police station at about 7.06 in the evening and went straight to House 577?---I have, yes, I've been shown that. Yes.

And did you hear on that, that when quizzed by one of the community members that House 577 the response of one of the IRT members was, "We're here to grab Kumanjayi"?---Yes, I did hear that.

Now was there any aspect of the conduct that you have viewed at either House 577 or 511 which would fall within your definition of intelligence gathering?---No, I've provided that evidence-in-chief. That didn't align with my appreciation of what intelligence policing is.

I'd just like to confirm that with you again. You divided intelligence gathering into two forms. The first one was I think tactical intelligence gathering, is that right?---Three forms.

I beg your pardon?---Tactical, operational and strategic.

Let's just whip through those quickly. Tactical, which is where you've tried to ascertain the layout, what's close by to the location and similar logistical information?---Yeah, that's also within operational but the distinction between tactical and operational is tactical is here and now and I need to - we've got something that's about to occur now, I need the information, the location. Operational is the distinction - - -

Let me stop - let me stop you there?---Sorry.

So in terms of tactical information gathering, according to your plan the arrest was to be taking place some 10 hours later?---Correct.

So there's room for tactical intelligence gathering at 7 in the evening?---No.

So - so - - ?---No.

All right. So the next one, you tell her Honour about operational intelligence gathering?---Correct. So that's the operational intelligence. That's a slow burn, again it's generally preparatory to an action, in this case it would be the 5:30 am action, it would be - that's where similarly in terms of the tactical stuff, preparatory to a tactical action, that this would be similar, you now, configurations of houses, adjacent locations, schools, et cetera, et cetera, et cetera, the list is endless.

Yes. Now but in the plan that you've looked at there's specific reference to the presence of Constable Alefaio, an experienced police member who lived for some time in Yuendumu?---Correct, yes.

Now, if I suggest to you that he had two particular roles in potential in this apprehension, the first was to provide intelligence to the IRT members, would you agree with that?---Yes, pre-emptively and at the time, yes.

And next, of course, to assist in the identification of a man who was not otherwise known to the IRT Members?---He probably had four - four functions, the intelligence,

flow of information. The second one is a definitive in terms of the identity of the individual.

Yes?---The third one would be the negotiation, for the lack of a better term?  
---Yes.

And the fourth one would've been for lack of a better term, a friendly face for the families, so there's a respect and it's not jus strangers on the doorstep, so it's a community reassurance piece as well.

Can add a fifth one? Perhaps the reassurance to Kumanjayi being taken into custody so that he wasn't too distressed or confused about what was taking place?  
---Correct, that was an important one and there was an acknowledgement that Alefaio had a previous history and good relationship with Kumanjayi Walker.

So in terms of the Alefaio component to this plan, how important was it in real structuring and content?---It's a critical cog in the broader apparatus of the broader framework.

There as a third component of intelligence gathering to which you've been referenced, we've done tactical and operational?---Strategic. That's more around sort of crime data, crime trend analysis, to pain a sot of a - to inform response to sort of emerging threats or issues strategically.

So in terms of what took place at 577 and 511 outside the houses, it - can we summarise that it was not tactical intelligence gathering, it was preparation to execute and arrest?---Search and apprehend methodologies rather than intelligence gathering methodologies.

Thank you. It was not operational intelligence gathering?---No.

And it was not strategic intelligence gathering either?---No, not by my definition of that, no.

And do you say to her Honour on the basis of your 25 years in the Northern Territory Police Force that that analysis is an orthodox analysis by reference to several police approaches?---I think so, yes.

Was it important that the member - the IRT members and the dog handler get together with Constable Alefaio prior to undertaking the arrest to coordinate what they were doing and how they would do it?---Correct. That should have occurred the afternoon before, yes.

Alternatively could it have been done at about 5 o'clock in the morning when they were all summoned to the station before they went down to 577?---It would have been my expectation and in terms of best process, would have been that the broad framework would have been established the afternoon before.

Yes?---And then the morning would have been a short, sharp discussion where we went "situation unchanged" and executed the plan then based on the conditions as they were, the provided conditions at the time. If the situation had changed well then there might have been some minor tweaking of the plan but the basis of the plan should have been well and truly established the afternoon before, from my perspective. That doesn't constrain - it doesn't mean it couldn't occur the morning of but.

Well, there was a key component I suggest to you on the morning, namely that that was when Constable Alefaio was commencing duty at 5 am. So that was going to be the opportunity for Alefaio to his input to assist the IRT members?---Correct, but Alefaio was also in the community the Saturday afternoon as well, so by my reckoning he could have or should have participated in that dialogue at the time.

But the key issue is that at some point he would be able to have is input so as to give meaningful guidance to persons who neither knew the arrest target nor the community?---Agreed, your Honour, yes.

If it was suggested to her Honour that the most problematic scenario that could have taken place in the aftermath of what had happened on the Wednesday - the axe incident, was to repeat an attempted apprehension inside a house at a similar time of day, namely around 7 o'clock in the evening, what would you say?---Agreed, your Honour.

So the attempted entry into 577 where the axe incident had taken place, effectively undermined the plan which you an Sergeant Frost had constructed to maximise the safety of both Kumanjayi, any other members of the household and the police members?---Agreed, your Honour, yes.

And then when the members made their way to 511 they repeated the error, raising the risks which had taken place just three days before?---Correct, your Honour, yes.

And had you been consulted about that in any way you would have told the members not to proceed in such a fashion?---Without a doubt in my mind, your Honour.

And if they had been thinking of proceeding in such a fashion you would have expected that yourself and Sergeant Frost would have been communicated with so that you would be given your opportunity to have input into the changed plan? ---Such a substantial deviation from the plan, yes, I would have expected a - not only command but a professional courtesy around that.

Now, the tragedy occurred and you were informed quite shortly afterwards, correct? ---Correct, yes.

And immediately you had a variety of concerns about what might be the community reaction?---Yes.

And you've told the Honour today that those concerns were generated from your extensive lived experience in central desert communities and your knowledge of Warlpiri people?---Correct, your Honour, yes.

A variety of other incidents which had occurred quite spontaneously within those communities?---Yes, your Honour.

And the reality that this was not just an incident between two different families or two different camps but was an almost unparalleled incident where a police officer had discharged three shots into a community member?---Agreed, yes, your Honour.

You were provided with information from Sergeant Frost in particular about what appeared to be the evolving community response, is that right?---Yes, your Honour.

Did the information provided to you and the way in which it was provided to you alleviate your concerns in any way?---No.

You've been shown certain videos taken by a community member which have been shown to the Honour on the first day of this inquest which show numbers of people at about 8:30 and about 9:30 and about 10:30 that evening. Do you accept that?---Agreed, yes.

And a fair analysis of those does not show any eruption of violent activity, distress or threatening behaviour. Is that fair?---Fair within the construct of those very limited points in time recordings.

Yes. Are you making a point by phrasing it that way that there may have been other things taking place at other times which are not caught on those videos available to the Honour?---I'm certainly making that assertion, yes.

And in fact, were you informed that there had been discharge of rocks onto the police station?---Multiple, yes.

And then, of course, in due course, you were told about the discharge of rocks at the ambulance and both the person driving it and the police officers?---Agreed, yes.

Were you told that it was believed that the health clinic was on fire at one stage?---Yes, agreed.

Did those matters add to the concerns that you had about what might occur if the community learned that Kumanjayi had passed?---Agreed, coupled with my lived experience. So, as I indicated, there were two matters that changed the dynamics of this situation and inevitably – well, in my mind, inevitably did not result in a more catastrophic outcome. And they were, as I indicated, the substantial leadership demonstrated by Derek Williams and the other Elders and the – uncomfortable as it sounds, the ruse.

It was also – before the ruse, there was the withholding of information that

Kumanjayi had passed away?---Yes, that's inherent in the ruse.

That's vital isn't it. And was it in those circumstances that you gave very serious consideration to a battling police station for fear of what might ensue if information came to the attention of members of the community that Kumanjayi had passed away?---Not only did I give serious consideration, I endorsed the "prepare to move" order, preparatory to an actual evacuation.

Then you spoke to Assistant Commissioner Wurst and you had a robust discussion about the matter looking at the pros and cons of that course and you were persuaded by him that it was a better course to remain at the station provided things didn't get out of hand?---It – yeah, I was persuaded, but it didn't take too much persuading. It was a common-sense position and one that balanced the fact that we still had the capacity to evacuate if certain triggers were reached.

Yes. And again, is this a criticism of the community or any kind of discriminatory as to Warlpiri people?---If it is, it's certainly not my intention for that to be the case. And I acknowledge it's probably hard for the Warlpiri community to hear my evidence and my evidence today that has been provided in such fashion, but certainly, that's not my intention, no.

Was the situation in your mind that if there was an eruption of violence, an attempt for instance to breach the police compound, the situation could be catastrophic?---That's my assessment, yes.

But Assistant Commissioner Wurst pointed out to you that likewise abandoning a police station would give a very problematic message, not just to persons in Yuendumu, but right through the Northern Territory and could have all manner of unforeseen repercussions?---Correct. But he also quite appropriately pointed out that we are the ones there to protect the community. We couldn't lose and leave the police station. We've got service providers in the community.

Yes?---We've got broader community members that, in the context of a civil unrest matter, would be non-combatants. They need to be protected and that's the duty we've taken and the oath we've taken and we couldn't certainly just drive out the police station.

And so that led to what you have described as a consensus decision to remain, unless, as you put it, triggers change your perception, in which case, you would have communicated again with the Assistant Commissioner about your changed views?---I may not have communicated it. Triggers were met and there was a "prepare to move" and a plan in place to facilitate the immediate evacuation.

But to the commendable restraint of everyone involved and the constructive contribution of Derek Williams and his father, the situation became quite calm after the return of the additional members from the airport?---Correct. Consistent with my contention that there was a broad-based belief that Kumanjayi Walker had been extricated from the community for the purpose medical attention.

And is it fair to say that you continue to be extremely uncomfortable with the ethical ramifications of what was done, but with all the consideration that you've engaged in over the last three years, you stand by your decision and are relieved at what was the outcome?---Agreed, yes.

Nonetheless, it does mean that there was the exercise of deception upon the Warlpiri community that night at a very sensitive time?---Agreed, yes.

You would have preferred to have allowed Kumanjayi's close family to be in the station to be with him when he was in his last phases?---I certainly acknowledge the very, very significant cultural protocols and practices around death and sorry business and yes, it hasn't sat comfortably with me that my determinations and decision-making compromised that very important peace for healing.

You were not prepared to put Derek Williams in the terribly difficult decision of knowing what had happened and asking him to withhold it from members of his own family and the community?---Yes, and as I indicated, selfishly, I needed Derek Williams to continue to do what he was doing and I couldn't compromise that.

And you regret what that – what cost that has left for Derek and his family, but you stand by the decision, difficult as it was?---Yes, your Honour.

You accept that utilising health personnel to be in the ambulance was problematic, but it was done again to give plausibility to the appearance of extrication of Kumanjayi for medical care in Alice Springs?---Yeah, I don't know if I'll go that far. In hindsight, it was very poor utilisation of the medical personnel in that regard and you know, deeply remorseful and sorry to Lorraine for the injuries she sustained and the inevitable trauma that she will carry forever, probably, around it, so.

So that is something that you would not do upon further consideration?---No, definitely not.

Should this arise again. Now you've been asked a number of questions about the general issue of racism?---Yes.

And you've been asked whether the system, however exactly one describes that, acts in one way toward Aboriginal people and in another way toward white people. What would you like to say to the court about your views in that regard?---Well look, I don't know what to say to that and it's – it was a difficult conversation earlier around a very broad abstract construct. I don't know. The only thing I can say is repeat what I said and that is we operate in an imperfect system and there's always room for improvement and you know, hopefully this process brings about some meaningful reform, not only for police but for the communities as well. So I don't know if I could go to the extent that the abstract system seeks to – yeah, I'll end it at that.

Now accepting that there are – there is a massively disproportionate incidence of arrest of Indigenous people in the southern desert area and elsewhere

too?---Agreed, yes.

Do you say that the reason why Indigenous people are arrested is because of their race or is it because of their conduct?---Well again, they're too simplistic of two descriptors that are too simplistic. It's more nuances than that. It's a multitude of factors that – so I can't answer that question, I'm afraid.

Well let's try a bit more, if you don't mind.

THE CORONER: Dr Freckelton, I'm just noting the time.

MR FRECKELTON: Yes. I've got about ten - - -

THE CORONER: Then I think - - -

MR FRECKELTON: Or 15. I'm in your Honour's hands.

THE CORONER: - - - to see whether Superintendent Nobbs is available to come back?---I'm at your discretion, your Honour.

I'm sorry that you're in that situation but it really is not – I really don't have the capacity to sit further and it's more to do with a whole lot of other staff that are required to be here to keep the building open and operating. So I think we'll have to ask you to return?---Thank you, your Honour.

And we will have to - - -

MR FRECKELTON: Sorry about that, your Honour.

THE CORONER: No, no. Everyone's trying to do their best to complete these matters but it's obvious that Superintendent Nobbs is a very significant witness and has contributed a lot of information over a number of different areas. And it's important that everybody has an opportunity to extract the information that's important to the inquest, which is what is happening. And appreciate you coming back tomorrow?---Certainly will. Thank you.

We'll adjourn until 9.30.

WITNESS WITHDREW

ADJOURNED