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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 22 NOVEMBER 2022

(Continued from 21/11/2022)

Transcribed by:
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THE CORONER: Take a seat.

MARTIN JOHN DOLE, on former oath:

DR DWYER: Your Honour, Mr Merenda is back at the Bar table and we know that Mr Officer had finished asking his questions. Mr Merenda asked for the court's indulgence to ask several more.

THE CORONER: Sure. Yes, Mr Merenda.

MR MERENDA: I apologise for that, your Honour.

THE CORONER: Don't apologise.

XXN BY MR MERENDA:

MR MERENDA: Commander Dole, my name is Mr Merenda. I act for Constable Rolfe. I just want to ask you some questions in relation to your evidence yesterday about your connection with Eddy Robertson. You spoke yesterday in evidence about the fact that Mr Robertson had referred to you as "brother" through the kinship system. You otherwise spoke generally about your relationship with that family in your time in Yuendumu. Now, you would obviously would appreciate by virtue of your involvement in this investigation, the connection that existed between Mr Robertson and the deceased, Mr Kumanjayi Walker?---Yes, absolutely.

Now, when you involved yourself in this investigation, did you have regard to the *Code of Conduct and Ethics* 2007 in relation to whether you should have in fact maintained any involvement in this investigation?---Yes, I do.

All right. And you see now potentially it might be regarded (inaudible) given your connection with Mr Robertson, you don't see a common interest in relation to this matter?---Yes, I can see that.

And you didn't exclude yourself from this investigation of Constable Rolfe?---No, I didn't. I saw no need to do that.

Well, I just had the *Code of Conduct and Ethics* (inaudible).

DR DWYER: Have you given (inaudible) any notes of that?

MR MERENDA: No, sorry, no.

THE CORONER: I've got a copy here, I think. That one?

MR MERENDA: Yes, I think so, your Honour.

THE CORONER: That can go to the witness.

DR DWYER: Could you give us the brief reference, please, so we can follow?

MR MERENDA: Folio 19.

DR DWYER: Where in folio 19?

MR MERENDA: I'm about to take you to it. If you go to page 6 of that document. Are you familiar with this document?---Yes, I am.

If you go to page 6 of that document, you see halfway down the page, there's a header "Conflicts of Interest".

DR DWYER: Sorry, I would just ask my friend to pause, so that everybody else can follow the evidence.

MR MERENDA: On folio - - -

DR DWYER: Yes.

MR MERENDA: - - - 17-28.

THE CORONER: So, folio 17-28.

DR DWYER: Thank you.

THE CORONER: And within that document, page 6.

MR MERENDA: I'll just pause for a moment, your Honour, so your Honour can pull up that document.

Halfway down the page, you'll see there's a header that says, "Conflict of Interest"?---Yes, I can.

At par 33, the importance of family (inaudible) accepted, however, members shall arrange their private affairs in a manner that will (inaudible).

"33.1 Prevent a conflict of interest from arising;

33.2 Ensure there is no indicated incapability or perceived incapability from a personal (inaudible) and beliefs and viewed impartial pursuant to their official duties and responsibilities;

and 33.3 Since minimising contact or interaction with persons who have continued to have (inaudible).

And if you down to (inaudible) 43, you will see, it's outlined there, a number of obligations on the police officers in relation to the management of the officers (inaudible) on page 7, which is involved:

"Members should, whenever practicable, avoid becoming involved in police matters involving themselves, their friends, their relatives in which they have a direct personal interest. And that immediate action is required (inaudible) of duty, such occasions should be referred to other members for production".

And you can see there in the Code of Conduct that that is marked out in bold?---Yes, I can.

Presumably grievances. (inaudible) your evidence yesterday in relation to your connection with Mr Robertson. How is it the case to be considered appropriate to maintain your involvement to lead investigator or lead member (inaudible) investigative team, given that connection?---Well, that's not correct at all. I wasn't the senior investigating officer-in-charge. I made no investigative decisions in relation to this matter and my role basically was the overall investigator-in-charge that was charged with providing appropriate resourcing to the investigation.

Were you involved in issues in relation to the obtaining of expert evidence?---I was involved in the JMC and the critical decisions that were put before the JMC.

Were you involved in any (inaudible) relating to decisions about who would give expert evidence and what they would give evidence in relation to?---Yes, all critical decisions that were brought to the JMC, I was involved in that - in that decision-making.

(Inaudible) resource (inaudible) were you involved in critical decisions related to the deployment of expert evidence in the trial of Zachary Rolfe, correct?---Well, it's the resourcing of expert witnesses to provide that evidence.

You're putting the label resource into that?---Yes.

One of the things you were involved with was the decision in relation to who would provide expert evidence at the trial of Zachary Rolfe?---Yes, if you say so.

No, not say - what I say so - that's what happened isn't it?---The decision-making around the allocation of an expert witness was a complicated matter. It was one that investigators struggled with in finding an appropriate representative to fulfil those duties - - -

I'm not asking (inaudible) - - -

THE CORONER: No. Let him answer the question please Mr Merenda, he is trying to explain what occurred. It's not as simple as one person making a decision, as I understand it.

MR MERENDA: And I understand that but that's not my point, what I - - -

THE CORONER: Okay, then let him answer the question.

WITNESS: I'm sorry, you may have to ask that again.

MR MERENDA: My point was you were involved in the making of decisions relating to who would give expert evidence in the trial of Zachary Rolfe or at least to provide an opinion in relation to that matter?---Yes.

Right. So it wasn't simply just a matter of general oversight of resources you were actually involved in the decision-making as to what would occur in terms of evidence gathering (inaudible)?---Yes.

Notwithstanding connection with the Robertson family?---That's correct.

I have no further questions.

THE CORONER: Yes.

Mr Casselden?

MR CASSELDEN: May it please your Honour.

XXN BY MR CASSELDEN:

MR CASSELDEN: Assistant Commissioner Dole, my name is Casselden and I appear on behalf of Mr Pollock. Can I just hand to you very recent promulgated Crime on (inaudible) investigation to you.

It is found, your Honour, at 17-30 (inaudible).

THE CORONER: I don't know if there is a hard copy available - for me. Sorry?

DR DWYER: That will take up time to print, your Honour, so if - would your Honour like to stand the matter down while - - -

THE CORONER: No. We will continue.

MR CASSELDEN: May it please your Honour. Assistant Commissioner Dole, did you listen to the evidence of Superintendent Pennuto's yesterday?---In parts.

Did you hear Superintendent Pennuto's evidence where he spoke of challenges between the criminal investigation and the Coronial investigation?---Yes, I did.

Do you recall that evidence that he gave?---Yes, I do, yes.

Now, this new general order, the crime, homicide and serious investigation general order promulgated yesterday, did you yourself have any involvement in relation to this issue?---So, as the Commander Crime, very soon after this we undertook to have a review of all of our general orders in relation to this matter due to conflicts

arising of some of those general orders. So I took an acting Superintendent and a senior investigating member off line for several months to commence the work in relation to that. However, this completed document I have only had a chance to review, your Honour, yesterday and note that it was authored by Detective Superintendent Peter Cannon, who is currently the superintendent in charge of crime command and a very experienced detective and it does encompass some of the work that was previously done by the members that I directed to undertake that work, your Honour.

And that work that you directed members to undertake, did that come about because of the perceived challenges there encountered in relation to this particular criminal investigation and Coronial investigation?---That's very correct, your Honour.

And is it fair to say that the previous general order Deaths in Custody and the Major Crime Instruction have been repealed as a result of this new general order?---I am not sure I can answer that accurately. The intention would be that they are. I am not sure if that has occurred exactly yet and this had actually been published yet. I can't answer that accurately.

If you turn the page over (Inaudible) tell me if that expectation or intending you spoke about is recorded under the heading "Virgin History"?---Yes it is, yes, your Honour.

And could I ask you then please, to turn to page 32 of the document and it's chapter 4, headed, "Death and serious injury involving contact with police, including death in custody", see that?---Yes, I do, yes.

And if you go down to the heading, "Employment of a commissioned officer in charge" and take a moment to read quietly to yourself, Clause 11 and Clause 12 of that particular section?---Yes.

In your opinion do those two Clauses resolve the challenges that were encountered as part of the criminal investigation running parallel with the Coronial investigations in relation to this matter?---I believe they do, your Honour, yes.

THE CORONER: Sorry, which paragraphs did you go to?

MR CASSELDEN: Clause 11 and Clause 12 on page 32 of the document.

Now, under the old Major Crime Instruction there was a provision for a post-operational assessment. Are you aware of those particular provisions?---I am, your Honour, yes.

In relation to the investigations relating to the passing of Kumanjayi Walker, has there been a post-operational assessment?---I am not aware that one has taken place yet, your Honour.

Is it an expectation, to your knowledge, that one will be undertaken?---Yes, it is, your Honour.

From my reading of the new Crime, Homicide and Serious Investigation General Order it does not appear to me to be any similar provision for a post-operational assessment. Does that accord with your understanding of the document?---If you say so. I can't actually say, your Honour, and confess that I have read this in full detail but it may be something that has been missed and could be amended into the future your Honour.

Would you expect, moving forward that within NT Police where there would be (inaudible) of the post-operational assessment in relation to criminal or Coronial investigations?---Yes, absolutely.

Your Honour, I don't have anything else.

THE CORONER: Thank you.

Dr Freckelton.

MS OZOLINS: I do have one matter that I would like to raise if I might?

THE CORONER: Ms Ozolins?

XXN BY MS OZOLINS:

MS OZOLINS: Assistant Commissioner Dole, my name is Sally Ozolins. I appear for the Northern Territory Police Association. I just wanted to ask you about some evidence that you gave yesterday in relation to the practice of payback and you indicated when Ms Boe was asking you some questions that while you were working at Yuendumu, which I understand was prior to 2001, if I have got the dates wrong correct me, that you had witnessed several occasions where spearing was done in terms of cultural payback, is that right?---That's correct, your Honour, yes.

Sorry, was that while you were at Ti Tree or while you were at Yuendumu?---I observed it in both locations. I observed it at Yuendumu and Ti Tree. The incident at Ti Tree, your Honour, didn't involve spearing.

It didn't?---No, i didn't.

So I think your evidence actually was, "I've witnessed spearings occurring at Yuendumu on numerous occasions when I was a police officer there?---that's correct, yes I did.

And then you went on, when Mr Boulten was asking you some questions about, in your view anyway, there's always been a conflict in policing duties and allowing cultural payback to take place. Do you remember giving that evidence?---I do, your Honour, yes.

And you said “It’s difficult to stand by and observe potentially serious harm be inflicted on somebody, and it’s something that’s never been easily navigated by police in communities.” Do you recall giving that evidence?---I do recall giving that evidence, your Honour, yes.

Now can you just clarify if the discretion that you talked about, is that the Northern Territory Police Force position, in relation to officers working in communities, where cultural payback, including spearing, is or has occurred?---It’s not the current position, no, your Honour.

The current – do you say that it was the position?---Well my evidence, your Honour, is it’s always been a difficult thing to navigate. And back in 99, early 2000’s, the police force was a very different place. And as I said, there was always a tension between the community needs and the police on community respecting the traditions and cultures of that community. And our oath of office to protect and preserve life, your Honour.

We heard some evidence from Senior Constable Brad Wallace last week, and in fact earlier. And he referenced a now revoked General Order in relation to the recognition of traditional law, and that sort of thing. Are you familiar with that General Order that’s now revoked?---Your Honour, I am. I believe it may have been a document authored by then Superintendent Thomas Vicard(?). And I did have some familiarity with that at the time, yes, your Honour.

Now even that General Order never permitted conduct by police officers which was contrary to the *Criminal Code* did it?---I’m sorry, your Honour, conduct by police officers?

The conduct, as in participating in, or condoning, conducted people which would be contrary to the *Criminal Code*?---No, certainly there was never any instruction of police participating in – in payback.

In fact it was strictly prohibited, even under the previous General Order was it not?

MR BOULTEN SC: So the question doesn’t make it clear what “it” is. What was prohibited?

MS OZOLINS: Participating in, or condoning, any conduct, including the supervision of payback, where the conduct would be contrary to the *Criminal Code*?---No, that’s my belief, yes, your Honour, that that has never been included in police policy.

And that would include assaults, the infliction of serious harm, do you agree?---Yes I do agree, yes.

And conduct which has the potential to cause death?---Absolutely, your Honour, yes.

Are you aware of any circumstances across the Northern Territory, where a spearing, as part of cultural payback, has resulted in long-standing injury or death?---Not that I can point my finger on, but I'm certainly aware of the risks associated. I couldn't take you to a point particularly where I'm aware that that happened personally.

So do you say that the situation right now is that members don't have a discretion in order to condone cultural payback conduct if you like, that includes conduct which contravenes the *Criminal Code*?---That's correct. We're absent of any policy in relation to that area in the police force.

Thank you.

I've nothing further, thank you, your Honour.

THE CORONER: Dr Freckelton.

MR FRECKELTON KC: Thanks, your Honour.

MR CASSELDON SC: (Inaudible).

THE CORONER: Yes.

MR CASSELDON: Thank you, your Honour.

Assistant Commissioner Dole, in relation to the (inaudible) I took you to, which is the Crime (inaudible) and Serious Investigation General Order. To your knowledge, do you know where the Office of the Coroner had any involvement in relation to the drafting of that new General Order?---Look I do believe, your Honour, when I appointed the Superintendent, the senior member, to commence some work in relation to the amalgamation of the General Orders, that consultation was had with the Office of the Coroner, the DPP, and several other related parties.

May it please, your Honour.

THE CORONER: Yes, Dr Freckelton.

MR FRECKELTON: Thank you, your Honour.

XXN BY MR FRECKELTON:

MR FRECKELTON: First, Assistant Commissioner, given your responsibilities within the Northern Territory Police Force, were you able to form a view as to the quality of the conduct of the criminal investigation in this matter?---Yes I am. I think the conduct of the criminal investigation was thorough, and beyond reproach.

Did you see it characterised in any respect by investigative or confirmatory bias?---No I did not, your Honour.

In respect of the involvement of Andrew Barram, did you see any indication that his objectivity or neutrality were compromised?---No I didn't. Not – not in any case at all.

Did the Commissioner of Police have any involvement in the investigation or in critical decision making in respect of the investigation?---Absolutely none what so ever, your Honour.

You've been asked some questions this morning by my learned friend Mr Merenda about your adherence to the Ethical Code. Did your familial relationship by skin name, and other affiliations, have any impact on any of your decision making in relation to this matter?---No, none what so ever. And – and I think that if anybody has any knowledge of the kinship system or the relationship system within Aboriginal communities, they'd be well aware that the fact that you're referred to as a skin name, or you're given that ownership by the community, doesn't in fact mean that you're a family member.

None the less, you had some relationship with for instance, the Robertson family, did that affect any decisions that you made, or discretions that you exercised?--- Absolutely not. No it didn't.

You were asked some questions by my learned friend Mr Boulten yesterday, about the role of law and justice committees in days past. Are you familiar with the Aboriginal Justice Agreement, which is in force at the moment?---Yes I am, your Honour. I am familiar with that document, yes.

And are you aware of the institution of mutual respect agreements in various parts of the Territory?---Yes I am, your Honour. And we recently signed a Mutual Respect Agreement with the community of Ngukurr at the opening of the new police station several months ago.

Could you tell the court a little about how those agreements work, and what their relationship is to the law and justice agreements that existed in days past?---They involve actual direct local community decision making. They invite local community authorities to meet with the police. They set standards for the expectations of policing in communities. What police will and won't do. And what the community will and won't do. And they set out clear directions for members of the police force, and members of the community, in working together, to resolve issues at that community.

Do you see potential for extension of those agreements to other communities within the Northern Territory?---Very much so, your Honour, anticipation as the Assistant Commissioner Regional and Remote, is that we have those in place in every community in the police – in the Northern Territory that we provide policing services to, your Honour.

How have they operated so far in the practical world?---Look, I think they've been very successful, your Honour. We're in the process of rolling them out. Obviously,

I'm encouraged by the work being undertaken by the Community Resilience Engagement Command as well, that's assisting us in that space.

In terms of how they're negotiated, is it by that Community Resilience and Engagement Command with leaders within the community? Elders within each separate community?---And the involvement of local police officers, your Honour.

And are there plans, for instance, to negotiate such an agreement in Yuendumu?---Yes there is, your Honour.

You've mentioned the – well, I'll call it CREC for convenience sake from now on, it's only been operational for a reasonably short time (inaudible) has it not?---Yes that's correct, your Honour. It's been operational since early 2000.

I beg your pardon, it's not (inaudible). But in the last three years, is it fair to say that it's gathered impetus?---That's correct. We've now got, I believe it's 40 Aboriginal Liaison Officers. The CREC's also responsible for the management and recruitment of Aboriginal community police officers, and the delivery of training programs to our Aboriginal cohort of employees.

What do you see as the future for CREC's work, aside from recruitment of the categories of obviously, you've just described?---Look, I think it's absolutely essential that it's continued to be invested in by the police force. My hope is that we have Aboriginal liaison officers at every community, that we have policing services and some where we don't actually have physical police presence either. The work of the CREC is invaluable in bridging that gap between cultural competence and general policing services. They work day to day with our members on the ground and I can't see a future without the involvement of the Community Resilience Engagement Command moving forward for the Northern Territory Police Force, your Honour.

Can you give her Honour an understanding of the personnel and structural organisation of CREC, so we can pursue those objectives?---Yes, your Honour. So, the CREC is headed up by a executive director that's not a police officer.

Yes?---She is a civilian employee. She is currently recruiting for a senior sergeant in that area, which is a sworn police officer. She has a director in that area and obviously is responsible for the identification, the recruitment and the training of Aboriginal liaison officers and the training and mentoring of Aboriginal community police officers as well. So, they work throughout the Territory and they work with officers in charge of police stations in managing the day to day activities with the Aboriginal liaison officers.

In terms of the resourcing and the direction and guidance given to CREC, whom does the director report to?---To the Commissioner of Police, your Honour.

And does the Commissioner of Police in fact have a very substantial involvement with CREC?---Yes, he does, certainly, your Honour.

You were asked some questions about the text messages that have figured prominently during this inquest and you expressed a view as to the appropriateness of persons who have such attitudes to be members of the serving force yesterday. Where has the – where have the failures come from which have led to persons functioning within the force that have attitudes of the kind that her Honour (inaudible)?---That's a difficult question, your Honour.

Yes?---I certainly think, in the time post-2019, we're a very different police force to what we were back then. I can only point my finger on lack of supervision and discipline leading to the acceptance of poor behaviours in the workplace as leading to that cultural of acceptance among the workforce, to participate in that type of behaviour, your Honour.

THE CORONER: How are you very different?---Particularly in Alice Springs, we've had a very complete transition of staffing in Alice Springs. There's a completely different management team. There has been a marked change in the staffing at the police station. We've got far more recruit constables and there's been, through attrition and moving on and transfer, the police station in Alice Springs is staffed with very different personnel than it was staffed with in 2019.

In 2019, it was a very young station. That's what it was referred to as. That's not changed?---It's still a very young station, your Honour. But it's different personnel there now.

Are there more senior members who are able to provide the supervision and mentoring that appears to have been required?---I wouldn't say there's more senior members than there was then, your Honour. There's different senior members than there was then, your Honour. There's different senior members in place than there was then.

How do they have better oversight?---There's been a lot of work in the discipline space in the last three years, your Honour, in calling out those behaviours and dealing with those behaviours in the workplace. And I'm confident that the superintendents and senior sergeants currently in place across the Northern Territory Police Force are aware of their responsibilities in dealing with those behaviours.

MR FRECKELTON: Well, they should have known their responsibilities in that regard in 2016, '17, '18 and '19?---That's correct.

What have you done to drive home to them what their responsibilities in these matters?---That's a continued – continuing effort and it occurs daily. It occurs by management walking around. It occurs through having those relationships with the superintendents and senior sergeants, setting expectations that you will tolerate and won't tolerate and dealing with behaviour as soon as it's identified, your Honour.

Superintendent – Assistant Commissioner, those are good words. But what are you doing in a practical level to actually make the change rather than uttering the words

which we all know should be uttered?---It's difficult to describe.

Yes?---But that's a personal commitment that I do daily. I set those standards - - -

Sure, yes?--- - - - that I expect people to abide by. All of our senior sergeants, superintendents and sergeants deal with disciplinary matters.

But you've always had those standards?---That's correct.

All right. So, your standards have not changed?---No, but it's ensuring that my managers abide by the same standards and call out those behaviours, as I do, and deal with matters appropriately and timely and effectively, and in an appropriate manner. And unfortunately, there seems to be a lack of that in the past and that's not the case, certainly not the case as I see it, presently in the police force.

What are you doing with your sergeants and your senior sergeants to – give that we know that a number of those persons have been involved in some of the text messaging and haven't done what they ought to have done to supervise intrinsically. What are you doing to make sure that there's a change in the quality of their work?---So, there's ongoing mentoring and supervision of those members. Some of those members are potentially subject to disciplinary matters over some of those issues.

Yes?---I'm aware that there is active disciplinary matters in place, but it's not all about discipline. It's about correcting those behaviours and setting an expectation of what's required, and not everything is in the disciplinary space. It's correcting and identifying that behaviour as early as possible, so that people can make those changes and act responsibly as they should, according to their rank.

Has there even been a change in where senior members at Alice Springs are located so as to bring them onto the floor and be more present on a day to day basis with duty members?---There has. That's still a work in progress. There's still some management moves taking place as we speak, your Honour. But there certainly has been a restructure of where people sit and supervision on the floor level in that Alice Springs Police Station, yes.

So, is that an attempt to break down a division between the higher up members of the station and those who are discharging day to day responsibilities?---It's probably more the middle management and the direct line supervisors, as opposed to the executive officers at the station.

Yes. And is the process taking place now whereby the Commissioner for the Northern Territory Police Force is meeting with all senior sergeants and now sergeants as well, in order to communicate clearly to them the expectations of the executive?---That's correct, but that's also a process that I've undertaken since arriving in Alice Springs since January, is I've commenced and continuing meetings with all the sergeants and above to set those expectations and have discussions about expected behaviours in the workplace.

Do you think from your experience of those meetings that that is bringing home to people what responsibilities are required of them and confronting them with changes in attitude that some of them need to bring to bear?---I do. I certainly do, your Honour, yes.

Have there been confronting discussions with some members in that regard?---To be honest, not really, your Honour. I think there's a general acceptance that previously there was some unacceptable and poor behaviour and there's a general acceptance and admittance of previous failings.

Have the many (inaudible) of unacceptable attitudes and conduct that have been aired in the course of this inquest had an effect on the Alice Springs Police Station?---To a degree. As I said, your Honour, the staffing of Alice Springs Police Station is different. There's different personnel than there was then. We're very conscious as a management team of making sure the welfare of our people is at the forefront. So, we do engage in executive access sessions, check on the wellness of our people and check on their day to day travellings in relation to revelations in this inquest and media commentary around the themes are emerging.

Some of the issues that her Honour has heard about have been experienced as distressing and confusing for some of the ACPOs and ALOs?---Without a doubt, yes, absolutely. Those – some of the commentary that has been aired that some of us have been aware of for years as part of this investigation, but now being revealed as part of this Coronial inquest, have had significant impact on our ACPO's and Aboriginal Liaison Officers, and how they see themselves within the police force. And how they see themselves fitting within the agency, yes, your Honour.

What is being done to support them, and make sure that they can have a well-placed sense of trust in relation to the non-Indigenous members - - - ?---So I'm - - -

- - - (inaudible)?---So I'm confident that all of the management team, and all of the police officers in Alice Springs Police Station are supportive of the work of our ACPO's and Aboriginal Liaison Officers, and the incredible work that they do to protect the community. I personally visit our ACPO's and ALO's, and reinforce that importance in the police force, and the importance to the service to the community. I regularly speak with our Aboriginal Liaison Officers and ACPO's on station visits throughout the Northern Territory, when I'm visiting the somewhat 50 odd police stations that I'm responsible for across the police station – across the Territory, sorry, your Honour.

I'm going to move to a different topic. You've spoken about the – your affection for, and experience of the Warlpiri people. But you've described too, that they can be emotional in their responses to issues that occur in their community?---Yes, your Honour, that's been my experience.

That they (inaudible) volatility in relation to their response to issues that take place amongst themselves, and also external issues. Is that right?---That's correct, your Honour. Very visual display of emotion.

If you were a more junior member, stationed at Yuendumu, would it be appropriate for you to undertake your duties without carrying a Glock?---No I don't believe so, no, your Honour. Our police force have accoutrements for a purpose of protection of life of themselves and others. And it's something that I believe the police should carry for that purpose.

Have you experienced antagonism toward police members carrying Glocks, as against long-arms, within communities?---No I can't say I have, your Honour, no.

Have you reason yourself to draw a firearm in the discharge of your duties?---Yes I have, your Honour, yes, on several occasions.

I think there are two which are prominent in your memory. Could you describe those briefly to her Honour?---Yes, your Honour. The first occasion was an incident at Nyirripi Community, which is some two and a half hours from Yuendumu. It occurred in approximately 2000. And we were called to the community in response to a firearms incident. And we received up to 10 calls at the Yuendumu Police Station that somebody was discharging rounds within that community. So at that stage, I departed Yuendumu, with the ACPO – sorry I departed Yuendumu with the sergeant at that time. And the ACPO Jabirula remained behind for one of our members that was returning from Alice Springs. And we also deployed Papunya Police to that community. We arrived at that community, on the outskirts of that community and were met with a lady that flagged us down. That said her husband had been discharging a firearm, and she believed he still had it. We advanced in, at that stage, we put bullet proof vests on. We advanced into the community, and were flagged down shortly by community members that said he'd been disarmed. He no longer had a firearm. We continued into the community and saw an Aboriginal gentleman with a spear that commenced running at speed in the direction of the health clinic. Community advised us at that stage, that he was going to spear the health staff, because he believed they'd called the police. We placed our vehicle in-between him and the clinic and – to prevent that happening. He returned to the centre of the community where there was some oval space. He was disarmed of the spears by community members. And we got out of our vehicle and engaged in a commentary with that gentleman. Myself and the sergeant, closed the distance, we were very close, within a couple of metres of this gentleman. And we were talking about the situation that he found himself in. And the fact that he was probably going to have to come back to the police station with us because of the offences he'd been involved in. At that stage, the police radio on the vehicle went off, and the sergeant went to answer the radio. This gentleman's demeanour changed. He looked at me and said "I think you should go." I started stepping backwards. And he reached behind him and pulled an axe out of his – out of the back of his pants and belt. Raised it above his head, and ran at me with that axe. I immediately turned and ran. My first – first thought was, here I was facing a gentleman with a large amount of community behind him. I turned and ran to try and distance myself from that attack.

He swung that axe, which struck me on the – on the vest, and slid down the back of my vest. As I was running, I drew my firearm, thinking that the next blow may hit me in the head and cause incapacitation. I had lots of things running through my mind, your Honour. I was conscious of the fact that he was chasing me, and community were chasing him. At that stage, sarg – the sergeant had been able to get back to the police vehicle, place the vehicle between myself and this gentleman that was chasing me, which created a physical barrier, enabled me to get into that police vehicle. And after that, probably two hours of negotiation, we were able to apprehend that gentleman without any further use of force.

In your mind though, is this an example of the unpredictable turn of events that can require the need for a firearm, and a firearm which can be drawn quickly?---Absolutely it is. But I – initially we responded to a firearm incident. Firearms are at the majority of communities across the Northern Territory. And this was a clear – to me a clear incident involving police to be appropriately armed.

Now there was a second incident?---In 2001, I was involved in an incident at Yuendumu, where we called to a general disturbance in the residence. I attended with a relieving member from Alice Springs, your Honour, at the time. We walked into the yard of the premises, and at Yuendumu at the time, the premises had enclosed alcoves or verandas at the front of the premises. So we walked through that alcove to the front door of the premises. There was no disturbance immediately apparent. I knocked on the front door of that residence. There was no answer. I pushed the door, and the door swung open. And standing on the other side of that door was an Aboriginal gentleman with a long-arm raised to his shoulder, pointing it at both myself and my partner. Both of us immediately drew our firearms. We issued loud commands of “Drop the firearm, drop the firearm.” My partner was able to seek some cover outside of the alcove. I was held as still in the alcove pointing my firearm at this gentleman. I’ve made the decision at that time that I was going to have to use lethal force. And I had started to squeeze the trigger. And your Honour, but for the grace of God, he put down the firearm, or he started to put down that firearm. And I didn’t have to use that lethal force.

How old were you when that occurred?---I was 24, your Honour.

Another example of where quite unpredictably, there can be a threat which requires a potential use of force from a firearm?---Yes, that’s correct, your Honour.

Do you accept, however, that for the most part, save in utterly exceptional circumstances, there is no reason for police to carry long-arms?---Absolutely. I agree with that proposition. And I don’t – don’t see a need for that, except, as you said, there may be exceptional circumstances that require that.

Thank you.

MR BOE: Your Honour, may I just make a submission. Some of the matters that were led by Dr Freckelton were not disclosed to any of us before they were given just then. That’s not a criticism. I understand it’s a work in progress. There are –

there is some utility in getting actual details of what this witness has spoken about. The changes since he arrived in Alice Springs. I'd ask that that be provided at some point. But may I ask some questions about that issue now? I'll only be a few minutes.

THE CORONER: Yes, Mr Boe, if it's only a few minutes.

MR BOE: Yes.

XXN BY MR BOE:

MR BOE: Superintendent – sorry, Assistant Commissioner, some questions from her Honour during Dr Freckelton reading some evidence go to an issue which is of great interest to the families. I wasn't here yesterday. I should announce I appear with Ms Baily, for the Walker, Lane and Robertson families. The matters of concern, which will be the subject of submissions down the track, were that the existing structure, that is, senior sergeants, and even superintendents, may be caught up in, if you like, an environment which was more tolerant, if I can put it, of racial disregard, misogyny, views about other diverse attributes of people in the community, et cetera. One of the issues that concerned the families is that what we've now heard is that when these matters were raised and investigated, if you like, the outcome really resulted in what has been called "remedial advice". That is, even currently, there are some members yet to face remedial advice for using racist, derogatory, misogynist attitudes. Your statement that the staff has changed is welcome, of course. The concern we have is, what process is in place to ensure that those staff are in fact appropriately mindful and subject to review themselves now, if these things were to occur in the future. Is there any documentation of what you just spoke about as having been used to satisfy yourself that everything has changed?---So, I apologise. There was a lot to that question and I'm a little bit - - -

I'm trying to get back on it - - -?---Yes.

- - - to get the question?---Yes.

Which is, with great respect, it's just not good enough for us that you say to us that it's changed. I mean, with great respect, I heard the introduction of your evidence yesterday. You are very well-equipped, if I may say, to have a great understanding of Indigenous relationships with police. I did not know of your history until that evidence was given. You are perfectly placed to have empathy for the situation. It is not just your word that we need, we need to know what is structurally in place to address those issues which flavour all the problems that we're investigating in relation to decisions made concerning this death?---I'm sorry, I'm still struggling a little bit with exactly what structures that you would like information about or what you're referring to.

Well, what did you do and what did you say, what did people say to you, how are you able to say, in fact, the environment, the culture has changed? We only have the words you just spoke at the moment?---Yes, I don't know how – your Honour, how

producing – how I'm able to produce that in a form of documentation to show that the culture's changed at the station. The information that I can give your Honour and I'm aware there's further evidence to be given by Assistant Commissioner Porter and Deputy Commissioner Smalpage in relation to some of the things that have been put in place in the disciplinary space may provide some of those answers to your Honour. But I can certainly give your Honour the benefit of my experience since arriving in Alice Springs in January and the work that I've undertaken on a personal level in making my expectations known, making it known to the superintendent, senior sergeants and walking the floor and speaking to the troops and gauging the attitudes of the staff at the police station, your Honour.

Are these briefings documented at all, or are they just informal conversations you had with people?---Informal conversations, executive access sessions with new recruits, setting the standards. As I said, I commenced going through meetings with all of the senior sergeants and sergeants and that's still work that's being undertaken, yes.

Has there been any thought given to acknowledging that if you had different people in the workspace, the behaviours change? For example, is part of the project that you are undertaking to improve the cultural understanding of the station or the force include prioritising having more women in leadership positions, having more Indigenous people, not just as ACPO's or ALO's, but in fact, a senior sergeants in those places?---In a short answer, yes. Look, I'm actively involved in the recruitment of the management staff that I want at the police station, your Honour. I sit on selection panels for the management staff at the station. In short, the answer is yes. I think the – again, I'm sorry, I'm still a little bit confused about that question.

Well, the confusion has been created by me, I'm sure. The point being is this, this inquest is looking forward to improving the circumstances that are (inaudible) in which police operate. We've heard that junior recruits are now being given a much more detailed education about cultural matters. A question was asked of those who were involved in the recruitment program as to whether or not there was any remedial or further education of senior sergeants and sergeants with that more greatly informed cultural insight into policing. That question was met with an answer that he had not thought about that until the question was asked. So, I use that as an example that it's not just simply, as Dr Freckelton put it, talking really good words, it's making sure that they result in actions. Because I can imagine, for example, a recruit coming in and saying, hey sergeant, we've been taught this at training, blah, blah, blah, and we thought this, this and this. And the sergeant who hasn't received the benefit of that detailed understanding may be resistance, because his lived experience maybe used by him to be of a superior insight into that issue. That's just an example. Whereas, if you had senior sergeants who are Indigenous or who are as well educated and experienced as you, that's going to have a greater impact on the culture and the environment in the police station?---Absolutely and I understand the question, Mr Boe. Your Honour, Indigenous advancement within the police force is something that we strive towards. As I said, I spoke of the work slightly of the CREC and I'm sorry I use their acronym, but the CREC is advancing the interests of Aboriginal employees. It's my great desire to have Aboriginal leaders within the

organisation throughout the police force at the level of senior sergeant and above who are actively recruiting further ACPOs into the - Aboriginal community police officers into the police force and working closely to advance them throughout the organisation. In response to the question in relation to cultural training at the sergeant and senior sergeant level, I can't take you to a document that exists presently, but I can inform your Honour that we're currently working in the Alice Springs Police Station on a further induction, cultural induction, document in relation to Alice Springs specifically. And that's to encompass not only education on Alice Springs and the Arrernte people, but the associated cultural groups around Alice Springs and some of the significant events that may impact policing services on those communities and immediately what springs to mind is particularly the Warlpiri people and the history in relation to the Warlpiri people and the past of the Coniston Massacre, the subsequent shooting of Jabanardi in Ti Tree and then the police shooting in 2019 informing the police coming into this area of some of the sensitivities and trauma experienced by these people and the difficulties that may encompass police – delivery of police services to these people. So, we're working on that document currently, but we don't have something in place.

THE CORONER: Is going to be more than a document? Is it going to be a – like a training package?---An in-service training, your Honour, sorry. So, not a document, actually something that is delivered. So, in answer to your question, sir, yes, your Honour, we are developing that at the Alice Springs Station and that is to be delivered not only to new recruits, but to sergeants and senior sergeants and all members of the station. The idea of developing it is as an induction package for people that are coming down, but my view is that it will be delivered to everybody.

MR BOE: One last question, your Honour.

An issue that Mr Boulten, senior counsel, asked of you yesterday bears on a matter that Dr Freckelton just raised with you. One of the deficits, if I may say, in the evidence so far is a real understanding of this perception that Warlpiri mob are in particular susceptible to becoming emotional, too emotional or acting wildly in particular situations and that's been mixed up with this notion about tribal punishment, mulla mulla payback. And shorts cuts taken by operational decisions of course is what is said to be a fear of payback if we did or did not do something. Do you understand what I'm talking about on the part of the police?---I believe I understand where you're heading.

So, it's often been used to say because we feared payback, we immediately decamped 511, rather than staying in situ and providing medical assistance, which you would ordinarily do if police were faced with somebody with gunshot wounds. Secondly, the police station didn't give information because of a fear of some immediate retribution. And thirdly, the deception and the rouse of the ambulance, because of a fear of retribution. Should it be part of the program that we've just spoken about, for the Northern Territory Police Force to be accurately informed of what actually is the cultural practice concerning mulla mulla(?), or traditional punishment? And what actually is the reasons for the high state of emotion expressed during mourning and sorry business, so that it's not misconceived as a

point of lived experience, as to why you won't – we will do things, or they do things that we would ordinarily do, to non-Indigenous people. That is, assess the situation on their merits. Do you understand what I'm putting to you? Because it has been said quite frequently by senior officers now, that that is the reason, from their learned experience, what they did or did not do things, yet it seems to me that there isn't a lot of evidence produced by the service, that actually understands it from direct evidence, or concise anthropological evidence about these two cultural issues?---Again, I'm a little bit confused about the - - -

What I'm asking is, we can have a specious view of what we think a cultural practice is and use it as part of the reason to an action. I'm suggesting to you that before senior officers, or any police officer makes a decision on a perception of a situation, they should actually be properly informed of the cultural practices that they think they know something about?---Yes that's – that makes sense, and that's sensible. However the – time to time, there's operation decision making that needs to be made on the incident – on the instant, where potentially, that senior officer doesn't have that experience or exposure to – to what you're talking about.

No, no, that's exactly the point. That – then they cite their belief of something as the reason to do something. You understand? I mean it is clear that – I certainly don't even have an adequate knowledge about these issues. I'm trying to research them now. The point being is, when somebody says, I did that, because that's how Warlpiri do, how Warlpiri react. I mean it's a misconception of – that's used to justify, either a greater use of force, or deception, in dealing with Warlpiri people. If either – well in the induction process that you're talking about going to equip itself with the actual knowledge of these cultural issues, or at least the anthropological evidence of what they are?---In short, I understand what you're saying. And my hope would be, yes, your Honour. There's very nuanced cultural differences right across the Northern Territory. And there's no one size fits all, as you're probably well aware, your Honour. So it's not possible to create a document that covers all the circumstances, Territory wide, on every cultural difference and cultural appropriateness at every community. But what we are working towards with the CREC is cultural induction packages at every station as well, for members that attend out there. But what I suppose I was referring to, is in the absence of something present now, we're developing a package for new recruits, and staff at the station, to discuss what's currently present in the environments around Alice Springs, and what they may come across in their day to day policing activities, and the history behind some of what they may come across, your Honour.

THE CORONER: Hopefully we can see that training package when we return next year?---Yes, that would be my hope, your Honour, yes.

And also any induction packages that have been prepared for the relevant and specific communities.

Thanks Mr Boe.

MR BOE: Thank you, your Honour.

Anything? Yes.

MR O'BRYAN: Your Honour, there was evidence led a short time ago about the use of guns in community.

THE CORONER: Yes, Mr O'Bryan.

MR O'BRYAN: Your Honour is aware that's a matter of significant interest to my client. I would just ask for your Honour's leave to ask a couple of questions about that issue.

THE CORONER: Yes, but we do need to press on. So we'll need to keep it short.

MR O'BRYAN: Thank you, your Honour.

THE CORONER: Yes, Mr O'Bryan.

XXN BY MR O'BRYAN:

MR O'BRYAN: Assistant Commissioner, my name's Conor O'Bryan. I am from Parumpurru Committee, who I understand that you're familiar with?---Yes I am, that's correct, your Honour.

You may be aware that Parumpurru Committee is opposed to the use of guns in community (inaudible). Are you aware of that?---Yes I am, your Honour, I am aware of that.

Assistant Commissioner, are you aware, of examples internationally, where international police forces have a policy of not using guns when policing communities?---Not that I can point my finger on, no, your Honour, not – no.

For example, in New Zealand?---Right, okay.

And I take it from that response, that you have not studied any reviews of those policies to understand why that is – why they give those policies?---No, I haven't, your Honour, no.

And would you accept, Assistant Commissioner, that in policing a remote community, it is a rare occasion where a police officer would have occasion to draw a firearm?---Yes I would accept that as a – as a proposition, yes.

Assistant Commissioner, now I'm not going to quibble with you that from time to time, police officers do need to have (inaudible) firearms. Can you see merit in a policy whereby firearms are stowed in a safe in a vehicle, for instance. And police officers may draw those firearms, from time to time, in their discretion if the case requires it, that there is a policy of not carrying the firearm on their kit, for day to day policing in remote communities?---I'm not sure, your Honour. I think that's a difficult

proposition. I think anything that places our police at risk of harm, no matter how remote, is something that would have to be very carefully considered. And I wouldn't be supportive of anything that places our police officers at risk of – of injury or death.

THE CORONER: Are there occasions in community, where events occurs, such as a community meeting, or a visit to the school, where police do not wear their Glock?---Yes I believe so, your Honour. It was certainly the case back when I policed the community. I didn't wear a firearm on all occasions. There may be occasion now where we do attend events, and social events, where that's not – that doesn't occur.

Is there a possibility for discussions around the potential for similar occasions, for example, where it would not be normal to wear a firearm, to be considered during the course of the formation of mutual respect agreements?---It may be, your Honour. And events such as community events, and those type of things, I think, potentially it would be sensible to consider some of those things, in consultation with the community, in exactly what you said. In forming those mutual respect agreements.

And once a mutual respect agreement is in place, is it envisaged that there will be continued sort of high level engagement between police and Elders, in reviewing policing, pursuant to the mutual respect agreement, and perhaps even developing further possibilities for change or development in relation to how Elders and the community interact with police?---Yes, absolutely, your Honour.

MR O'BRYAN: Assistant Commissioner, my last question for you is, you mentioned a moment ago that some careful consideration would need to be given to adopting a policy where firearms are not carried generally in community. Do you think there is merit in undertaking that careful consideration, in light of international examples where such policies are adopted?---I definitely think there's merit in examining options. I don't think I'd take a position in saying I'd like to come to a final position on what the outcome should be. But I don't see any harm in examining practices. However, as again, I want to reinforce anything that jeopardises the safety of police officers or the people that we're trying to protect, I think warrants – again, warrants very close examination.

Thank you, your Honour.

THE CORONER: Dr Dwyer.

DR DWYER: Your Honour, very briefly.

REXN BY DR DWYER:

DR DWYER: So part of the – you were asked some questions by Mr Merenda about your objectivity, essentially, in relation to the investigation. Part of the role of community police is to develop a relationship with the community, is that right?--- That's correct, yes, your Honour.

We've heard some evidence so far about the importance of police meeting with respected Elders in the community, as soon as possible after they arrive in the community?---Yes, your Honour.

You agree with that?---Absolutely, yes.

And Sergeant Anne Jolley told us for example, the importance, to her of respected Elders like Eddy and Lottie, Warren Williams, the Simms Family and we've heard of the importance, for example, of Mr Nelson and many other respected leaders in the community. Some of them happen to be Kumanjayi's family of course, you understand that?---Yes, absolutely, your Honour.

And you would agree that for any police officer to do effective policing in Yuendumu it's important that they develop respectful relationships with Elders like that?---Yes, absolutely.

And really with as many community members as possible, I take it?---Yes, your Honour, absolutely.

You still, as I understand it, have to police without fear or favour, in the community as a community police officer?---Yes, absolutely you do, your Honour.

Would it be possible to provide effective policing as a community police officer if you remained completely aloof and distant from the community?---I certainly don't believe so, your Honour. As I said, the cornerstone of policing in the Northern Territory is community policing and it is forming those strong and long-lasting relationships that enable you to police those communities.

In communities you went to after Yuendumu, like Kintore, sorry Ti Tree?---Ti Tree.

To police, did you also develop strong relationships in those communities?---Yes, I did, your Honour, yes.

Did you nevertheless have to carry out your duties in terms of investigating crime and charging people on occasion?---Yes, absolutely, your Honour.

Did your relationships with community members affect the way that you would police the community?---No, they didn't, your Honour, no.

Did you in any way feel compromised in your investigation of crime in other communities outside Yuendumu when you developed community relationships? ---No, I haven't, your Honour, felt comprised in any of the policing duties that I conducted.

You've given evidence that as a child when you were living in Yuendumu with your parents, you and your parents were given skin names? Is it your understanding that Kartiya who were respected in community are given skin names so that they are, in

terms of what you experienced in Yuendumu, so that they can be part of the fabric of community?---Yes, that's my understanding, your Honour.

And part of a kinship community in terms of that shallow understanding of what is a deep and significant concept?---Yes, your Honour, absolutely.

That enables Kartiya to be connected to the whole community, is that right?
---That's correct, yes, your Honour.

When you went back to police the community in Yuendumu as a young officer you told us, with your wife as a nurse, you had connections to the Yapa an Kartiya community, is that right?---Yes, I did, your Honour, yes.

Did you still have to police the Yapa and Kartiya communities?---Yes, absolutely, your Honour, yes.

So, for example, if there were Katiya in the community without a liquor permit you would have to charge them with an offence?---Yes, that's correct.

And did you nevertheless feel able to police without fear or favour for Yapa and Kartiya in the community?---Yes, your Honour, I didn't have a - I never had an issue with it.

You had a connection to Constable Rolfe in this regard, he was a serving police officer at the same time you were a serving police officer?---Yes, correct, your Honour.

You both are still serving police officers in the Northern Territory, correct?---That's correct, your Honour, yes.

Were you nevertheless able to play your role in this investigation involving Constable Rolfe without fear or favour?---Yes, I was, your Honour.

You were asked some questions about the concept of payback. We have been provided with general orders that have been in existence and one of which appears to be revoked and one which may still be in operation. Can I hand you a copy of these two documents and provide a copy to your Honour as well, a hard copy, just to see if I can clarify through you which one of these orders, if either of them, is still operational. You see one - if I could take you to the first one in time. A document dated Northern Territory Police Fire and Emergency Services Policy, Aboriginal Customary Law Involving Payback. It's dated 3 November 2005 and is not struck through with any watermark. Are you aware of whether or not that general order is, in fact, operational?---In all honestly, your Honour, I wouldn't be able to give an informed opinion on that. I am aware of a body of work currently being undertaken to rationalise all of our general orders, so there may be some work being done to rationalise this into other documents but I couldn't accurately tell you if this is currently still in operation, your Honour.

All right and I am putting you on the spot, Mr Assistant Commissioner, without giving you any notice of this just because it has arisen in the questioning. There's another document in front of you, General Order Aboriginal Customary Law Involving Payback which is dated later in time. The promulgation date was October 2014 and it's to be reviewed by October 2017. It refers to a previous version of 3 November 2005 which would suggest that this earlier one is revoked and the words "revoked" are struck through. But I take it that you can't assist us in relation to whether or not there is another document then following this, on payback?---No. No, I apologise, I am not able to assist the court with that.

A PERSON UNKNOWN: We will confirm the situation.

DR DWYER: I am grateful, thank you. I am grateful to my friend. I just want you to then, if you wouldn't mind, having a look at the document which says "revoked" so that I can make this position clear, particularly to those in seeing to the evidence. Under the reference to "Payback" there, at par 5, there's a note;

"Payback is a term commonly used to refer to aspects of Aboriginal customary law involving some element of physical punishment for transgressions. However, this English term may be misleading because it overlooks other related and important customary law practices, such as restitution and reconciliation not just between the victim and the offender but for their respective families and the community as a whole, that are part of the concept."

You appreciate if you have a look at the earlier version in 2006, that more developed understanding of payback as involving peacemaking or restitution and reconciliation was referred to even back then in 2005, correct?---Yes, that's correct, your Honour.

And then - I am not suggesting that's - and I certainly don't purport to speak to the Warlpiri or the community of the Northern Territory at all and this, of course, is a document which purports to apply to the whole of the Northern Territory. It goes on to outline at par 7;

"The Northern Territory is committed to the recognition of customary law within the framework of the general law and international treaty obligations, such conduct that does not constitute a crime".

It goes on to - over the page you will see, consistent with something that Ms Ozolins raised with you, it says;

"Payback may be recognised to the extent that it does not contravene the criminal code. Similarly, in" -

sorry, that's crossed over, but in something to do with sentencing.

THE CORONER: "Determining".

DR DWYER: Thank you, your Honour.

"In determining sentencing, Northern Territory Courts do not take into account and form of customary law or cultural practice as a reason for excusing, justifying, or authorising the criminal behaviour to which the offence relates. The Commonwealth and the Northern Territory Government have demonstrated the commitment to addressing all forms of violence and in particular alcohol-related violence in the Northern Territory communities by enacting"

And there's a reference to the Stronger Futures in the *Northern Territory Act* 2012. It goes on to note that;

"In effect, Northern Territory Police are to do their best to prevent acts of violence, not to become involved in managing or supervising and to preserve relevant evidence."

Do you know why this general order was revoked?---No, I'm sorry, I don't have that information for the court, your Honour.

Putting aside any act of physical punishment, like spearing, can you see the importance of recognising the customary laws of Aboriginal people in the Northern Territory?---I can, your Honour, and as I said, I am aware of the Aboriginal Justice Agreement and I do recognise the importance of recognising Aboriginal traditional law and the concept of restorative justice in communities.

And you would support a general order that recognised those laws?---Yes, your Honour, I would.

Thank you, your Honour. Sorry, just one further issue. In relation to the text messages that you have been asked about, part of the issue that we've heard is that in the Northern Territory disciplinary action needs to be taken against police officers within six months of discovering the conduct. Are you aware of that?---Yes, I am, yes, your Honour.

I beg your pardon, I am corrected by Mr Boulten. Do you know how long it is that police have to take action against police when the conduct is discoverable?---It's six months. Two months is a different matter in relation to the *Police Administration Act*. The six-month matter is in relation to date of discovery.

Yes?---In relation to police misconduct.

So for the text messages for example, for the moment where a prescribed member becomes aware of conduct is there six months to take disciplinary action?---To commence disciplinary action.

Unless an extension is granted, is that right?---That's correct, your Honour, yes.

And an extension has to be granted by the – by a judicial officer, is that correct?---
No, an extension can be granted by a senior commissioned officer. But that's after
proceedings have commenced. So it's six months to commence proceedings. And
then extension could be sought by a senior officer, to continue after that six month
period, if – if it's commenced within that period, your Honour.

And if it's not commenced within that period of time, is the response police are left
with, senior police are left with in dealing with the conduct, something referred to as
managerial guidance?---Yes, your Honour, yes.

Which is not within the disciplinary framework, is that right?---That's correct, no it's
not, your Honour.

If you became aware of racist language used in text messages, or racist language
used out loud, is that action that you would take, or is that conduct that you would
take immediate in relation to?---Yes it is, your Honour.

Thank you.

THE CORONER: Yes. Thank you very much for making yourself available, and for
providing evidence over the last two days Assistant Commissioner. That completes
your evidence. No doubt you may be contributing in other ways to continuing to
address the issues raised in this inquest. But you're free to go now, thank
you?---Thank you, your Honour.

WITNESS WITHDREW

THE CORONER: Dr Dwyer.

DR DWYER: Thank you, your Honour. I call Mr Nicholas Anticich, your Honour.
I'm sorry, just while I – while he's coming to the witness box.

Might I tender those two documents I referred to. That is the Payback Policy
from 2005, and a document dated 23 October 2014, which appears to be Revoked
Aboriginal Customary Law Involving Payback. They can be tendered as a bundle.

THE CORONER: Thank you.

MR FRECKELTON: And your Honour, we'll provide you with a statement which
identifies the status of those documents - - -

THE CORONER: Thank you.

MR FRECKELTON: - - - (inaudible) in relation to related matters.

THE CORONER: Thank you.

They'll be given the next exhibit number.

Mr Anticich, please take a seat. Thank you coming to give evidence today.

NICHOLAS ANDREW ANTICICH:

XN BY DR DWYER:

DR DWYER: Mr Anticich, can you please tell the court your full name?---Nicholas Andrew Anticich.

And in which jurisdiction do you currently live?---Western Australia.

You are currently I think in – retired, is that right?---That's correct.

And we have brought you in to court, you're in the middle of your travels around Australia, is that right?---I was in the middle of travelling around Western Australia, yes.

You have produced a number of statements to assist her Honour in this inquest. They're found at 7-4, 7-4A and 74AA of the brief of evidence. The reason that you have produced those statements of course, is because immediately before your retirement, you were the Assistant Commissioner of Crime, Intelligence and Capability in the Northern Territory?---That is correct.

Under the crime command aspect, you oversaw major criminal investigations, including homicides, is that right?---That is correct.

And did you – was it also your responsibility to oversee Coronial investigations, where there was a critical incident involved?---Yes it was.

In your second affidavit of 3 September 2022, you set out some of your background in policing. We've got that before us, so I won't go through it all, but you were seconded to the Northern Territory in 2019, is that right?---That is correct.

And before that, you were in Western Australian Police for 10 years?---Yes.

And you indicate in your statement, you've also had a number of other investigative roles, is that right?---Yes.

You were in the AFP for 24 years, as you set out in your statement?---Yes.

Were you seconded to the Northern Territory Police for a particular purpose?---I was.

What was that?---It was a review of their disciplinary model, and concerns around that. So it was a review undertaken over a short period of time, to see if there was a better way, or – of dealing with discipline as such. Which resulted in the formulation of a report containing a number of recommendations.

So when did you do that investigation into the disciplinary process?---I believe 2019.

And you produced a report after that time, is that right?---That's correct.

And do you recall the name of that report?---I believe that there was a Northern Territory rubric cut around policy improvement report or review, but it had a particular name, yes.

Who did you produce that report to?---It went to the police executives and the Commissioner.

Do you recall that you commenced that report in 2019, and finished it in that same year?---That's correct.

Who was the Commissioner at that stage?---Acting – Acting Commissioner Murphy.

And the Commissioner that replaced Acting Commissioner Murphy?---Yeah I might correct it, I think it was – no it may have been Commissioner Kershaw, but I believe it was Acting Commissioner Murphy who was replaced by Commissioner Chalker.

We can – we can check that of course. Was any – were there a number of recommendations in your report, then the subject of any action?---I – I'm not sure, because I left, or returned to WA at the conclusion of the report.

I see. So in relation to – when did you return to WA?---Shortly at the conclusion of that period. I think it may have been two or three months, was a – was the purposes of the review.

What year?---2019 again I believe.

So you came up to the Northern Territory to do that report, and then you went back to WA is that right?---That is – that is correct.

I see. Did you then return to the Northern Territory?---Yes I did.

When was that?---I believe in March of 2020.

And for what purpose did – did you come back?---I came back initially, on a secondment, that translated to a permanent position with the Northern Territory Police.

And when did you retire from the Northern Territory Police Force?---A good question. I think perhaps – I'm not certain.

Was it in – so if Kumanjaya passed away in November 2019, so of course you had a role to play in the Northern Territory Police Force, following his passing?---Correct.

And what was that role in effect?---Effectively, is the substantive Assistant Commissioner for Crime Intelligence, as you've previously outlined. The role of oversight of that major crime and Coronial investigation.

So you had overall – you had oversight of the criminal investigation, correct?---Correct.

That is in relation to the murder trial for Constable Zachary Rolfe?---That's correct.

And you had oversight of the Coronial investigation?---That is correct.

You – I appreciate Mr Anticich that you have retired, and you don't have access to all of these documents –

But I call for the report, your Honour, that was provided to the executive in 2019, in relation to reform of the disciplinary process. I'd be grateful if Mr Freckelton could provide that, at some period of time.

MR FRECKELTON: We'll provide that report, and also a subsequent report, that was externally commissioned to senior Victorian police, and has been completed. That latter report we shall provide to you early next year, your Honour. Not providing to you for the moment, because there are processes that need to be undertaken to provide it to the government first. And then once that process has been completed, we'll make it available to the court.

But that is up to date, and it follows a full-scale evaluation of Professional Standards Command operation and issues relating to supervision and discipline of Northern Territory Police. It runs to over 170 pages, and it recommends substantial reform.

DR DWYER: I just note that we'll need that well in advance of the executive coming to give evidence.

MR FRECKELTON: Of course.

DR DWYER: Those are my questions, your Honour. Your Honour, we started at nine o'clock, I just wonder what time your Honour would like to take a short break.

THE CORONER: You're keen to go somewhere Mr Merenda?

MR MERENDA: I'd ask for that brief break, your Honour.

THE CORONER: Sure. Well we'll take the morning tea adjournment now.

WITNESS WITHDREW

ADJOURNED

RESUMED

THE CORONER: Yes, take a seat. Dr Dwyer.

DR DWYER: Your Honour, I have completed my questions. I think Mr Boe - - -

THE CORONER: Mr Boe.

MR BOE: Thank you, your Honour.

NICHOLAS ANTICICH:

MR BOE: Mr Anticich, my name is Boe and I appear with Ms Boe for the Walker, Lane and Robertson families in this inquest. You understand who they are?---Yes.

I only have two areas I want to ask you some questions about, and may I make it clear that I'm not going to interrogate the differences that are in your material with Mr Pollock, that's not of any interest to us at this stage. At par 68 of your statement, you don't need to go to it, I'll just read it out. It says, "I understood that the Coroner required separate investigations in an attempt to avoid a situation where police conducted or were suspected of having conducted a substandard investigation to assist their colleague who had been charged." Do you remember saying that in your statement?---I do.

Assuming that accurately characterises what his Honour said to you or directed you, may I ask you this? It went on to say, "Thus it was a matter of ensuring the integrity of the process in maintaining community confidence." We've been told in recent days, in fact the last day or two, that there is a proposed new general order which isn't yet in place, but will be, which Mr Casseldon – it is now, okay, that Mr Casseldon took a previous witness to where, although it's – each chapter is numbered. So, it's chapter four, Clauses 11 and 12 where it's now stated that the deputy commissioner will appoint a commissioned OIC to be in overall charge of the incident. Have you been taken to that at all?---I have read it, yes.

Yes. And you know, 11 says that the commissioned OIC is responsible for investigating both the criminal and Coronial aspects?---Yes.

And that because criminal investigations are by nature time-sensitive and necessarily assume priority over Coronial under inquiry?---Yes.

Now, the issue I wanted to raise with you is this, before that came in, with respect, it occurred to me that that would not be a bad option, leaving aside issues of complete independence at the moment, did I heard you say earlier that you were in fact the OIC in charge of both Coronial and criminal investigations in relation to the Rolfe matter?---I was – I had oversight and overall – control might not be the appropriate word, but certainly coordination thereof. It was not only – just to put it into perspective, there was the criminal investigation, there was the potential disciplinary matters, there was the Coronial investigation, there as the external oversight with the

CMC, I think, who lives here in the Northern Territory, contact with the ombudsman's office who also had a hand in the referral and WorkSafe who were also undertaking an investigation in their own right. So, there were a number of different dimensions as related to that matter or generated from that matter.

But you were the officer in charge of all of it?---Effectively. Effectively, I had oversight of all of those areas and for want of a better word, yes, I would accept responsibility for their operation.

So, Clause 10 is not a new thing in fact, if in fact it requires or obliges the deputy commissioner to appoint a commissioned OIC to be an overall charge of the incident?---Yes.

You're welcome to have a copy of the document just so that I - - -?---Look, I think I can answer it without reference to it.

MR BOE: Mr Freckelton, I wonder if you have it?---The principle of unified command - - -

Yes?--- - - - however complex the matter is absolute, a problem, an issue, a challenge you have is once you start to stratify or separate aspects of a particular matter, it comes complicated. So, if the intent is to have a single point of unified command, I would 100 percent absolutely agree.

That is exactly what I was wanting to get to, because it seems to me, although I haven't studied the whole document, but 10 is not a new thought. That's the position you held at the time?---Correct.

The second, Clause 11 again that is for the investigation for both Coronial and criminal to be conducted in tandem is again not a new thought, is it?---I would suggest it is, in the sense that my experience is where you have a criminal matter preceding a Coronial matter, it is generally the procedure I'm familiar with and I do – I will quote two exceptions to the rule, is the case that the criminal investigation is conducted, a trial is completed, the evidence that's been gathered becomes the main spine of what then becomes the Coronial report and subject to the inquest.

Yes, that's exactly what I'm wanting to get to. It troubled me that the information you said in par 68 raised a concern which is not addressed simply by the priority of the investigation. I'll put it this way, would you consider that the notion that was raised in the first sentence that there may be a suspicion of police having a particular empathy towards the situation of Rolfe and may not do things that they might ordinarily do if they were involved in the investigation of a person that is not a police officer. That that concern could apply to Coronial police officers, could it not?---Correct.

So, that point with respect to the Coroner seems to be a false point?---It's a point you need to take up with the Coroner.

What I'm saying, however, is that you seem to acknowledge it and implement it. That is, somehow, that there should be a division in the investigation in some way. And can I put it this way, isn't it simpler that if you were in charge that you direct officers to pursue lines of enquiry as to all relevant material in evidence to the issue at hand, that is, a shooting by a police officer. That's the first step. The second step is, you might flag along the way evidence which may not be relevant and thus admissible at a criminal trial and you might siphon that off, siphon that off, perhaps, for consideration. But in any event, you have one file that accumulates the ongoing evidence and at the time a criminal brief is delivered, that it includes all the evidence that you have with markings as to matters which may not be strictly admissible for consideration by the prosecutor. That is, you don't need two teams going with an exercise of saying - a criminal investigator goes and speaks to a witness first, not interesting enough for us or relevant and now Coronial people can come in. That allows things to fall through the gaps a bit, does it not?---I agree.

So, it should really be a system of collating the evidence, obtaining the evidence in an ordinary way where people with integrity who are going to be impartial accumulating that and then deciding what is admissible or likely to be admissible, or contestable for that matter, for example, tendency evidence. And that's a job for somebody else to do and filter and then the prosecutor and thereafter that, judge. Do you understand?---I agree.

So, the structure that's put in page – the following page to the new general order, the diagram with the chain of command, if I may say - - -?---I haven't seen the diagram. Yes, please, thank you. Page?

The next page - sorry, page 33. 32 is where I was reading Clauses 10 and 11?
---Yes.

In Clause 16 there's a diagram titled, "Chain of Command". Can you see that?
---Yes.

It seems to me, with respect, odd that a Coroner had been put in a diagram of a chain of command under the Deputy Commissioner. I don't know if that's the intent but that doesn't seem appropriate, does it?---Yes, it does. Look, I'm not sure of the construct and in fact it starts to refer to the reporting as it does below. I would think it was done for a reason.

And I will leave it to others to defend?---Yes.

I just thought with our experience it was worthy of commentary since we are trying to move forward to a situation where the sort of conflicts that occurred in this investigation don't occur. So you're in charge, you have people under you, you are investigating and along the way various steps take place where the brief that goes to the prosecutor may not have all of the ancillary information that go to recommendations and the like?---Yes.

But therefore nothing is ever thought to be only to be in a brief for the Coroner or only to be in a brief for the criminal prosecution. Would you agree with that?---I would.

Now, this goes to the second matter which I wanted to ask you, which is specifically, if I may say, exemplifying this point. Mr Pollock, in his - again lately served statement, talks about his interactions with Superintendent Pennuto about the transcript that was provided to Darren and others concerning the body-worn video of Rolfe speaking to Leanne Oldfield?---Yes.

You are aware of the issue?---I am.

From my study of what was done in the criminal trial, it seems that certainly by then - that is by the start of the criminal trial, had proceeded on the basis that liability would only be alleged in relation to the second and third shots. You're aware of that? ---Correct, yes.

And that was partly informed by Mr Barram's report with his opinion in relation to that, correct?---Correct.

Now, what I have seen is Mr Barram's report when it refers to his analysis of those issues has the inaccurate transcript of that recording?---Yes. Well, you know, the other version, let me say. There's an issue with accuracy can I suggest - - -

Incomplete - incomplete?---Yes.

You accept that Superintendent Pennuto agreed with Mr Pollock's identification of what those words were. He did so yesterday?---Your Honour, my experience is - especially in relation to recordings such as this nature, we could play that again here today and I would suggest that different people will have different perceptions of what was said - so let's talk about two versions as opposed to one being correct and agreed to an otherwise - because I am very cautious. I have been in this situation before and it's not accurate to say one is correct and one is not.

We all understand that the evidence is the recording?---Yes.

We all understand that. What we do know now is that Mr Pollock having listened to it more closely, as an experienced investigator, thought that he could hear further words where the transcript originally had "inaudible". You understand that? ---Correct, yes.

You can accept it from me that Superintendent Pennuto yesterday accepted that the version put by Mr Pollock was agreed to by him, okay?---Yes.

And I think he said it was the result of collaboration or something like that. Right? My concern is why did the agreed to transcript not go to Barram?---I don't know.

Well, it seems, with respect, a really critical issue, does it not, because it does go to Barram's assessment of the reasonableness of the entry. If, for example the Pollock version, it was clearly that Oldfield - Ms Oldfield was not giving permission to enter her mother's house, whereas the current - the version that Barram was working on leaves open the possibility was she was giving permission. I mean, it with respect, seemed to me a critical matter about the evidence concerning the entry into House 511?---Okay.

So when you talked earlier about the criminal investigation being whatever language was used to say that it was fantastic, I mean, that's a critical failing, is it not, that the use of force expert may or may not have used - listened to the audio recording but was being given a transcript which was agreed to by the two senior officers as being at least incomplete?---Well, Mr Boe, that was my question. Did he base his assessment on the audio recording or the transcript you say is incorrect?

Well, his report refers to the evidence on that issue on the incomplete version. And then that had consequences down the track because forensic decisions were made by those who had that evidence at hand to see would they interrogate the possibility that the reasonableness issue or the good faith issue was affected by the fact that, in fact there was a trespass by the police, and it went into the issue of what force can be used by a person repelling a trespass. Do you understand?---I do.

To this day I can't get to the bottom of why that issue was not provided to the prosecution?---That's a question I think, your Honour, that needs to be posed that can give you that direct answer. I can't.

But I thought you were in charge of the criminal brief - criminal prosecution - or you had oversight, if you like?---Your Honour, perhaps Mr Boe doesn't quite understand how police structure and organisation - but you're absolutely right. I have oversight but as to the minutiae of what occurs on each event or each part of the investigation, that's just impractical. What I do is make sure the policies and procedures are adhered to and we deliver to a plan and we are across the issues that arose. That's how it operates, so I can't give you a direct answer, unfortunately.

Can I just press softly on that? The only reason I am going to this - and I really respect the fact that you are no longer in the service, is that in the following paragraph of Mr Pollock's recent statement, he speaks about actually having had a conversation with you and that your response to him was, "Have you talked to Kirk Pennuto about this" and there's language used of emotion there in that statement about the conflict - I am not getting to that but it struck me that something as critical as that was lost because of some sort of conflict in command decisions and the result is the whole direction of criminal liability was skewered off?---If, as I requested, Mr Pollock raised it with Mr Pennuto then I would assume that there is an answer that lies in whatever that response was.

Yes. Because when you look at the trial transcript, neither in the cross-examination or examination of Rolfe - or Constable Rolfe or Ms Oldfield was the issue of that conversation ever interrogated. May I say this, do you think it would have been best

practice that once there was this issue arising as to some lack of clarity in that recording that at the very least Ms Oldfield should have been asked to listen to the recording and asked her to contribute to - given that it's her voice, it's quite unusual, is it not, when there is a lack of clarity, to go to the speakers and ask them what did, in fact, they say, with the assistance of the recording?---I agree.

Do you agree that that is a failing that that did not occur?---I don't know that it did not occur, are you - - -

I am suggesting to you that it did not occur?---Well, it is a possibility that it could have occurred. My question really is, if Mr Pennuto was advised of the different interpretation placed on the recording, what was his response?

Sorry, are you asking me a question?---He said he accepted yesterday - - -

Yes?---Yesterday at the evidence that he gave that he accepted there was a difference. At the time he was notified by Mr Pollock what did he do? Did you ask - - -

Well, I don't have - we couldn't get access to the recording or the transcript last night but my recollection of hearing it is that he agreed with Pollock's statement or opinion, as to what the words were said. And that he agreed with it, and in the result, that he thought it was a collaborative result to – to work out what in fact was said. Others will correct me. But there was no doubt that he said, when he was told by Mr Pollock, he agreed. At that point, where there's an agreement by two people who are having whatever differences, surely it was necessary to go down that evidentiary rabbit hole. Speak to Ms Oldfield, get her version, and then make sure that the criminal brief had that, and made sure that Barram, when he's giving his opinion on liability, had that. Surely that was an important thing that should have been done?---And I again ask, what did Mr Pennuto say he did at the time he was told of this?

I have to confess that, it was my fault, I wasn't here yesterday while Pennuto was being cross-examined?---Well I think – I think that question might answer the line you're pursuing.

Well what we do know, that it didn't change what Barram relied upon in his report?---Yep. And there may be reasons for that, that are not apparent at this point in time.

Can you think of what possibly could be a reason to not give that - - -

THE CORONER: I'm not going to just ask him to speculate.

MR BOE: No, all right, thank you.

Those are my questions, thank you.

THE CORONER: Ms Morreau.

MS MORREAU: Thank you, your Honour.

XXN BY MS MORREAU:

MS MORREAU: Mr Anticich, my name is Paula Morreau, and I appear for the Brown family, a family of Kumanjayi Walker. I wanted just begin by asking you some questions about your experience in WA?---Yep.

Was it the case that Deaths in Custody were investigated by the Professional Standards Command, or were they – on every occasion, or was there at times, investigations by the Crime – Major Crime Unit?---As a general rule, they were undertaken by – within the Professional Standards Command, which is a fairly big command. The only exception, I think, would have been those involving some sort of motor vehicle crash, that had a degree of expertise that fell to those people with that - - -

Particular traffic - - - ?---Yep.

- - - investigation experts within the police service?---Yes.

And would you agree that there is a benefit in allocating a particular component of the police force, namely Professional Standards, to investigate, in particular, other police actions?---Absolutely.

And the benefit, in your own words, is?---A specialised unit, I think, that is capable, used to, familiar with dealing with those, sometimes difficult scenarios involving other police officers, that can play out, yeah, with some difficult, it has potentially can occur in small jurisdictions, and where you don't have that specialised unit.

Yes, so there's the skills that you're speaking of, that are regularly exercised?---Yep.

And there's also a degree of independence that's built up when there's a particular unit with that responsibility?---Yeah.

Correct?---Correct.

The Corruption Crime Commission in WA, did that ever have a role in investigating Deaths in Custody?---It had oversight. So all – all police complaints that did involve Deaths in Custody, or police presence, were referred to the Commission. So we had absolute oversight of all of those complaints. It was, to my recollection, it was not the case that I recall where we independently investigated a matter. Often it was a review of what had been investigated, rather than independently. So – and I think there were a couple of instances where there were – of deaths that – well they weren't in police presence. It was the case that we certainly had visibility of them, rather than investigation of them.

I see. And that was a requirement that that oversight was a statutory requirement, correct?---That is correct.

And was there a discretion for the Crime Commission to take over an investigation if necessary?---There was. There was an ability to direct that we take control of a particular matter.

And to in fact take over the investigation, or only direct it by police?---No, to take over the investigation.

But just in your experience, that hadn't happened, to your memory?---Certainly not in relation to Deaths in Custody or police presence. But certainly in relation to some investigations where the Commission took on those from the police.

Thank you. And as I understand it, you led a number of these Deaths in Custody investigations, whilst you were the head of – or the Commissioner in relation to Professional Standards Command?---I oversaw. Again, whilst I was in the role for about four years, I would suggest there were maybe three or four deaths in police presence, predominantly around the discharge of firearms, resulting in death, and or serious injury.

And was there ever a situation, in the experiences that you had, where the officer was – an officer was suspected of committing a crime leading to the death?---No.

Now was the approach in WA one in terms of policy, I mean in investigating a Death in Custody, one of presuming a crime, or presuming a homicide, unless or until otherwise concluded in the course of the investigation?---The policy changed shortly before I took on the role. There was an event in which five officers were involved in a – the discharge of firearms, and result in death and the wounding of an innocent party. They had – or were arrested by Professional Standards, for the purpose of questioning. The Commissioner at the time, took a view that that was an inappropriate response to what occurred. The policy was reviewed, rewritten, and it was the contrary, there is – the assumption was, that no crime had been committed during the commission of their duties, unless factors pointed towards that. So a presumption of innocence from – from the start.

And that's now in place is it, to your knowledge?---To my knowledge, yes, correct.

But you're aware that the original setting that I put to you, is one that was picked up, following the Royal Commission into Aboriginal Deaths in Custody?---Yes.

And the point of it is really to ensure that there's a level of meticulousness, associated with that investigation, correct?---Yes. Yes.

And would you agree that that's a good process?---It is problematic. If you understand that that previous policy existed for many years, and the new policy's been in existence for years. Both have operated, it's a question of proportionality. You can understand officers, in the execution of their duties, or in doing their things,

do – their actions result in a death in police custody or presence, but it has been done lawfully. Is it appropriate for them to be arrested in the process of the investigation, when in fact that's part of their role of duty. On the contrary, if in fact they've – someone has died, as a consequence of an action, generally the assumption is, if it's not a police officer who don't have those powers, then they're arrested for the purpose of questioning. I can't give you the correct answer.

Thank you. Another component in terms of policy attaching to investigations of Death in Custody, that was picked up in the Royal Commission into Aboriginal Deaths in Custody, and may or may not have been picked up in WA, is the importance of police who are conducting the investigation being independent from those – or sorry, I withdraw my – I withdraw that question. Were you aware, when you moved to Northern Territory and assumed control oversight of this investigation, of the principle of ensuring independence in the investigators, so that they are not persons who are associated, or from the same station or region, as the person who, or people who are under investigation?---I was aware of the principle. And it was certainly made clear to me early on in this investigation by the Acting Coroner, and the Coroner, that their desire was not to have officers from Alice Springs, involved in the investigation of the shooting incident.

Did you become aware of that principle because of the Acting Coroner's conversation with you, or was it something that you understood prior to that?---I think that happened virtually on the morning I was told this. So I don't know that I had much - - -

I think there was one day - - - ?---Yeah - - -

- - - difference?---It was pretty much a – but look, it is a challenge. It's not a – it's a problem across other agencies. Generally speaking there are policies around declaring associations. So in other words, if there is some form of relationship or connection to the – there's a format or a form that's put forward, and it's then assessed, and determination made if that's going to compromise the integrity or otherwise.

Did you turn your mind to that – I understand that you appointed Superintendent Joe Foley from the Alice Springs Regional Crime Division. Is that correct?---I - - -

That was your appointment?---I did appoint her, no.

That wasn't your - - - ?---No.

Thank you.

Was there any review undertaken, to your knowledge, to ensure that any early steps that were taken by Alice Springs investigators, in that one day, in terms of the crime investigators that arrived in Yuendumu overnight, accorded with good practice, transparency and effectiveness?---No.

I want to turn to a matter that you covered in your statement at par 67. And that is the directions given to police officers who were involved in incidents to separate or not discuss those incidents. You're aware of that subject matter?---Yes.

Did – you've accepted there that that should have occurred in this case. Did you, at any point, do anything to ensure that police officers involved in the incident were to separate, when practical – practicable?---No, not personally.

Did you, at any point, ensure that police officers involved in the incident, were told not to speak to one another about the incident?---My assumption would be that that would be done as a matter of practice, and my understanding was that it did.

Did you see it as any part of your role to ensure that it did?---Not particularly, no.

And that is because you assumed that those underneath you would put those directions into place?---That's correct.

Did you consider it part of your purview to consider disciplinary ramifications for officers involved in the incident that was being investigated?---Yes I did.

I see. And in that regard, what steps did you take in relation to disciplinary processes?---As part of the JMC when it formed initially, in it's first – in its first iteration, there were three – three effective arms of it, or proposed. It was the criminal investigation, there was to be the Coronial investigation, and there were the disciplinary matter, so the Professional Standards group were part and parcel of that management committee.

And there are particular time limits that apply to breaches of discipline. Namely six months under the *Police Administration Act*. Were you aware of that?---Yes I was.

And were you – did you have a system, or bring up to ensure that if there needed to be an extension of time that those extensions of time were applied for?---I was well aware, aptly(?) aware of it. And my understanding was that the Commander for PSC went before a magistrate, and sought an extension of time in relation to the disciplinary matters.

So you – you're aware of it at the time, that it did occur?---Yes.

You mentioned that you – part of your role was also to liaise with the equivalent of the Crime Commission in WA, which in the NT was ICAC?---Beg your pardon, yes, I've called them in correctly.

And Work Place Health and Safety I think as well. I'm particularly interested in the role that ICAC played, if any, here. What was the liaison that was required, and what sort of monitoring or liaison – what liaison occurred?---They were – they were fairly new in guess in terms of their role and functioning. We had negotiated – they wanted oversight of the matter. And certainly details around what was occurring. Effectively we facilitated it through a number of meetings, but importantly, we gave

them access to our case management system PROMIS. So effectively, we gave them computer access to they were able to watch and see what the investigation entailed.

So there was a particularly officer of ICAC that was allocated this particular investigation, is that?---I think there were a number over the course of it. But yeah, and I don't remember the - - -

And the process was one of giving them information that you unearthed during the course of the investigation?---It was an overview again – sorry, a review type of function again. I think they have a similar provision to the WA agency, where in fact they could direct or take the matter on in their own right if that was their wish.

And did that happen at any point?---No, not at all.

Thank you sir, they're all my questions?---Thank you.

MR BOE: Your Honour, may I just correct something I incorrectly put earlier? I did in fact cross-examine Mr Pennuto. But the statement from Mr Pollock was served at 2.51 pm, after I had finished. And was only introduced by Dr Freckelton at that point. That's why I wasn't aware of that issue at that time.

THE WITNESS: Okay.

MR BOE: And to give others a reference point, it's transcript 3563 is the answer that Mr Pennuto gave to Dr Freckelton, when he said, "After the audio, and then as a consequence of that, I subsequently, having heard the enhanced version, was inclined to agree with Mr Pollock's view of what – what had been uttered." And then question, "So is that an example of the collaboration between the two of you?---I would like to call it that, yes." And no further question was put as to whether or not there was a correction of Barrams information.

THE WITNESS: Mm mm. Yep.

MR BOE: Thank you.

THE CORONER: Mr Boulten.

XXN BY MR BOULTEN:

MR BOULTON: My name is Boulten, and I'm appearing for the North Australian Aboriginal Justice Agency. And I'd like to invite you to advise the court what you perceived to be the main areas that needed rectification in the Northern Territory Police disciplinary system when you conducted the review?---It's a while. But in essence, and again, not an uncommon fault. I think that the system had been made inoperable by virtue I think, of the input through the Northern Territory Police Association. Their rabid pursuit of innocence, in absolutely every case, the inability

to apply simple disciplinary outcomes to relatively straight forward matters. The complications of a ruling by a judge. I think the six-month provision, in terms of - - -

Disciplinary time (inaudible) yes?---Correct.

Yes?---I'm not sure if that is in statute, or as a consequence of a ruling, however, these were matters that needed to be pursued, and taken to higher jurisdiction for clarification, ratification. I understand that needs to occur because some of the interpretations placed on how we comply the disciplinary system have been interpreted in a particular way that make it almost impossible.

Could you give a couple of practical examples of the difficulties please?---Well, as it reads now, if someone – if a police officer was to engage in an act of misconduct - - -

Like? Give us an example?---Let's say an assault.

Yes?---It's witnessed by another - - -

In the course of duty, or performed in the course of duty?---Any sort of - - -

Yes right?---And is witnessed by another police officer. Or he tells another police officer.

Yes?---That officer then says nothing, and effectively six months after the event, it becomes known through another process. If the fact that he'd disclosed it previously on the first occasion, to the other officer, it's said to have fallen out of statue, or the time period, as an example. It's a very simple example.

What about the two month time limit on charging people with criminal offences under criminal provisions of the *Police Administration Act*?---Yes. And I can't recall those specific provisions, to be frank. I'd most probably have to refer back to the report. But there were a number of complicating interpretations of the Act. There is a view that it does need to be amended and changed. I'm of a view that there's another interpretation that might be applied to some of the provisions that would make it workable. But if we have a highly litigious environment where every single matter, how petty, how minor it might be, that is taken to the highest court by the NTPA. It is impossible to litigate every single simple matter.

Mr Anticich, I want you to assume that not everybody here is nearly as familiar with the problems that you're talking about. Can you just spell out a bit more please what is the nature of the litigious atmosphere surrounding police disciplinary matters?---It's a general observation and I make this on the fact that I was there for two years.

Yes, well more than most of us. Go on?---But nearly all matters, there was, it would appear any admission of fact or guilt in relation to anything that any officer did. I mean you know, let's be reasonable about this. I think you can argue points of law about culpability, you know, responsibility and so forth, but every single case effectively during the period that I was aware was not guilty, didn't do it, it wasn't us.

And that would include allegations that are made by members of the public that required investigations about complaints, right?---Yes.

People who'd been dealt with on the citizen's say so, badly by police?---Yes.

Allegations of excessive use of force would be a good example, right? Do you agree?---Yes.

Many of the complainant you would understand are Aboriginal people, right?---Yes.

In the Northern Territory?---Yes.

So in the context of an issue that might involve considerations of criminal conduct and considerations of disciplinary action, how does an investigative body handle that tension practically?---Your Honour, the law around this issue has evolved. 20 years ago the position was where an officer was charged with a criminal matter, that criminal matter was to be dealt with and all other matters laid in obedience. I think subsequent Royal Commissions in New South Wales and Western Australia indicated it was not a particularly good management of that issue or officer. Often it not convicted we were left with the dilemma of saying well what do we do with this person. Often the time lag from the time of a prosecution commencing to the completion of trial and/or appeal was years later. Often those officers were on the sidelines and ultimately, we destroyed, you know, their will to work or be police often if they were on the benches for so many years. What then evolved was a model that said well you need to deal with these things administratively, albeit that they are criminal. The way devised I think for a period was that you had independent investigations, so effectively the criminal investigation sat here in a silo and the matter was investigated disciplinary by another team and they could come to a disciplinary outcome as a consequence and the person could be dealt with subsequent to the criminal prosecution.

You mean dealt with - - ?---Dealt with administratively, possibly dismissed and/or sacked prior to the criminal prosecution.

But you just said subsequent to?---Beg your pardon, prior to. I beg your pardon, I meant prior to. What then emerged was the issue around the right to silence. It began its journey I think in the National Crime Authority case X7 and effectively the coercing or compulsion of answers from persons that could relate to criminal activity. And arising out of that I think derivative use. It then led to, I think, further proceedings and outcomes at various Supreme Courts around Australia but ultimately the High Court. And essentially it went to the issue of the use of any form of coercion or extraction of fact from a person suspected of or charged with a crime and its impact on subsequent prosecution. So where we are and where we were in my mind at the time this matter proceeded was that we were not to impinge on the suspect or accused's right to silence for fear that it could contravene or cause problems in terms of the criminal prosecution.

On the assumption that the emphasis on a suspect's right to silence is likely to continue to have significant policy impact in this area, how useful is it then to have time bars like two months for criminal actions under the *Police Administration Act* and six months for any other form of civil or disciplinary action?---It isn't. It's ridiculous.

Presumably your report said something like that, Mr Anticich?---I hope so.

And have you been given a chance to look at this Victorian report that the court's been advised about?---No, I haven't.

You'd be interested to read it, I would imagine?---Yes, I suspect it'll – it'll go to – these issues have perplexed Australia and New Zealand some years back arising out of the ANZPA Crime Forum, they - - -

The what?---The Australian, New Zealand, Police Advisory Agency which effectively was a meeting of all the assistant commissioners for crime across Australia and New Zealand. There was a realisation that a forum needed to exist for professional standards, that is groups across Australia dealing with these identical issues. We formed the inaugural meeting of that some time back in WA and it was attended. And it was very interesting. It became an annual event. But effectively these very issues you raised, Mr Boulten, are issues that perplex all the jurisdictions in terms of how we deal with police involved in serious crimes and discipline.

Siloing disciplinary action from – well siloing the investigation of disciplinary action from the investigation of criminal action virtually impossible in many cases, right?---Absolutely correct.

And where there are parallel investigations with different people involved, creates the potential for and usual some complication in both parallel investigations?---I agree.

The difficulties with individual decisions made in let's say the drive to get a version where one is almost mandatory in the course of a disciplinary investigation against the need to preserve the accused's right to silence and preserve the police and the prosecution from criticisms at trial that are unfair advantage has been had through a different mechanism, right?---Correct.

But there was in this particular case that you were overseeing in two different streams a number of tensions that emerged during the course of the investigations, weren't there?---Yes.

And part of it, it seems, was because the Coronial investigation necessarily required an analysis of the effectiveness and the appropriateness of decisions made in the criminal investigation, right?---Yes.

And as I think you pointed out, there may well have been scope for review the other way around as well but that didn't seem to be pertinent, it didn't crop up in your time? ---Yes.

But is it the case that you would, if you had the - not that you are going to be doing it in the future by the look of it, but if you could structure a system, your system of investigating cross-over matters, disciplinary and potential criminal matters, would clearly look and sound independent from the normal police command?---Sorry, could you ask that question again?

Yes. Should look independently, such investigations should be clearly seen to be at arm's length from those that are being investigated?---That is a view, yes, that is, but I think I know where you're going but I suspect that to say that independence, what do you mean?

So, okay, so clearly it would be ill-advised when there is a serious question of criminal conduct for a work colleague to be involved in the investigation, right?---Correct, yes.

What about - let's take a garden variety use of force complaint and an investigation say, that might lead to a charge of assault?---Yes.

Wouldn't that be better dealt with by somebody who is not immediately in a supervising position?---There's a philosophical argument.

Yes, well what is your position on this?---I have changed over time.

Well, we're happy to hear?---All right. Philosophically the management, the performance of people falls to their line managers. So therefore, the argument should be, where they do wrong, where there's a requirement to discipline, that should be their role and that should be their function. Unfortunately, my experience is that often the outcome can be sympathetic to the colleague and it doesn't align with organisational values. A centralised model - so in other words it goes to an area that previously - like internal affairs or the ethical standards division requires a lot of resourcing and often can be portrayed quite negatively by the organisation. I think somewhere in the middle seems to be the best model and effectively where it can be dealt with at a regional or a localised level but there is oversight centrally so that there's a standard that's adhered to and any deficiencies or failure - or what ever it might be that's identified, it can be identified and it can be dealt with.

Well, the Coroner will make a decision about some of these issues?---Yes.

But there is evidence before the inquest that here in Alice Springs some of the immediate supervisors of general duties police did not address complaints of excessive use of force in a rigorous manner and that the results were time after time complaints by NAAJA on behalf of Aboriginal clients were essentially regarded cynically or the product of over-exuberance or bloke-ism, I suppose would be a new way to put it, and that the police officers who were the subject of these complaints were exonerated?---Your Honour, it's an abject failure and it's corrupt. It's wrong. And this shouldn't have happened.

Your time limits would be one problem. Properly injecting into the situation someone that is not a friend or a mate would be another issue, would it not?---Yes.

And in an ideal world, perhaps a world that can be achieved, a culture developed where everybody in the police force accepts that it is in everybody's interest that a specialised command that deals with complaints about police is a worthy thing, not an animal, right?---Absolute. Your Honour, I think it's important not to forget the oversight agencies. I mean ICAC is still nascent, it's still growing but effectively it should have the same powers and oversight, they should have the capability to identify such shortcomings. All of the matters should be reported and of course there is the Ombudsman as well. So I think that enhancing their capabilities, enhancing their role to make sure the gamekeepers are honest in this case, would be a good thing for the Northern Territory.

So you know how the Ombudsman has a classification of seriousness of the level of departure from standards?---Yes.

And therefore that (inaudible) on who investigated and how the outcome is achieved?---Yes.

Would you accept that, as you see things - or as you saw things - the Ombudsman referred many, many, many matters to the local area commanders, local police, to investigate their colleagues, than public policy dictated as beneficial?---They did do that. I am not sure what the public policy is but that referral from an oversight agency or complaint received to - back to the originating agency is not uncommon. So even in other states the proportion of matters where an agency has capability to investigate itself, a large proportion of matters goes back to that agency as the most capable.

So public policy is a matter for debate, of course?---Yes.

But you're a person with particular experience and as I understand what you have said already in evidence, is that if the ombudsman is not going to independently investigate complaints it would be better that the referral go to someone who is not immediately in the same police station or line of command?---I don't think that the Ombudsman has to independently investigate, or ICAC. What they need to do is exercise their oversight capability in that if there are obvious deficiencies, if you are saying things that have occurred as you allege then they should be picked up in the course of their oversight capability, I would hope.

Well, Mr Anticich, ICAC does not have the capacity to drill into the way in which a sergeant or senior sergeant in Alice Springs reviews a use of force complaint by a NAAJA solicitor, do they?---I think you're right, yes.

Nor does the Ombudsman. The Ombudsman is a very small statutory office. In fact, one person with some people employed there - they just don't have the capacity to do this, do they?---At the moment, yes.

There needs to be more independent investigations of police complaints in the Northern Territory, doesn't there?---History tells me, your Honour, that does not necessarily equate to a better outcome.

Well, what about perceptions, Mr Anticich? We'll take this case as the best example. On the one hand, you've got dozens, if not hundreds, if not the majority of the Northern Territory police having a very fixed view about what you and your colleagues did and they're not very favourable, it seems. On the other hand, you've got people in Yuendumu who think you didn't deliver justice and that the Northern Territory court system doesn't operate effectively. And when you were in charge, you were a member of the police force, right? So, for perception's sake, there is an investment in goodwill and ensuring that at least it can be said there's absolutely not vested interests in the way that the investigation was conducted. Do you agree?---I agree. But I don't think you're ever going to solve that problem, even with an independent oversight agency. People are still going to believe what they believe based on their own perception.

One would trust that perceptions can be moulded by logic on occasion?---The solution in – with my greatest respect, your Honour, is this, you need to believe, build a police force of integrity, of trust and something that the community believe in. And the police service needs to be able to have the adequate capability to deal with badness within itself. It is the only way, I believe, to effectively deal with this problem.

So, Mr Anticich, this week a report was delivered in Queensland about racist attitudes of police in Queensland. This court is also dealing with evidence concerning racist attitudes of police in this area. Do you simply say, well there's got to be a better police officer, there needs to be a better force, practically speaking, when a community requires action. So, what is the action that would solve such problems, Mr Anticich?---I think we've heard some of that evidence from Mr Dole. I believe Mr Smalpage will address some of that and I hope the commissioner has a vision that I believe in that will delivery, but it ain't gonna happen tomorrow. This is a long-term cultural fix. The important thing for me and the hope I hold, those text messages and the communications that we saw were abhorrent. And it offends me as a police officer to think officers of my profession are involved in such conduct. Those people have to go. They have to – we cannot have them representing the community in a police force that's here to protect the community. It is wrong. My view is, we have to support the people who are in the force. We have to give them more faith, I think, in the system where they see something wrong, they can do something about it. My fear and belief is, a lot of where we've got to now is a consequence of a complicated difficult process in which you can report something wrong, the thought of the NTPA Association fighting against you because you're going to say something about one of your own. It's much more easier to walk past this and let it go and that's probably ended up in some of the situations, some of things we see now.

Time constraints means I'm going to sit down?---Thank you, sir.

As the court pleases.

THE CORONER: Thank you, Mr Boulten.

MR FRECKELTON: I have no questions, your Honour.

THE CORONER: Mr Merenda.

MR MERENDA: If you could allow me one moment, if I can.

XXN BY MR MERENDA:

MR MERENDA: Mr Anticich, my name is Mr Merenda and I'm representing Rolfe. Now, right at the outset (inaudible) of the investigation of this business of – you understood by virtue of your discussions with the Coroner and also Superintendent Pollock that what was expected was a gold standard investigation?---Yes. Yes, that's right.

And that was a label that was effectively being used from the Coroner's office to describe the quality of the investigations expected in relation to this matter?---Yes.

You understood at that time that conduct of the criminal investigation might well be considered by the (inaudible) investigation?---Yes.

And you also understood and you accepted at those very early stages that the Coronial criminal investigations run parallel?---Yes, yes.

And it's the case, isn't it, that in line with that, Detective Superintendent Pollock was appointed as the person in charge of the Coronial aspect of the investigation?---Yes.

And he reported to you in that regard in your role as the overseer of Operation Charwell?---Yes.

That being the investigation into what occurred at Yuendumu on 9 November 2019?--Yes.

Now, by virtue of all of that and similarly, by virtue of your discussions with the Coroner and Superintendent Pollock, it was your expectation, wasn't it, that both investigations would be careful, thorough and of a high standard in accordance with their respective purposes?---Yes.

Now, sitting there in your seat today as you've giving evidence before her Honour, do you believe that when it came to your involvement in managing these two concurrent investigations, that's the overseer of the Operation Charwell, but you have contributed positively to that expectation?---Yes.

Right. I wanted to ask you some questions firstly about your experience at – your 42 years' experience as a police officer (inaudible)?---Yes.

When I say, "police officer", that's across the law enforcement generally, across a number of different agencies around Australia?---Yes.

Including the National Crime (inaudible)?---Yes.

It's probably the case, sir, to say that you're probably one of the most experienced police officers giving evidence in this inquest?---I would like to be experienced.

MR BOULTEN: Is it you're the oldest?---Yes.

MR MERENDA: Nonetheless, 42 years and also operating in Western Australia at a high level crime (inaudible) and professional standards, you understand, no doubt, that when it comes to the police and the work the police do, that accountability is a fundamental concept?---Yes.

And in terms of how you ensure accountability is maintained, one of those critical ways in which you do that is by ensuring the contemporaneous records kept at work that police officers do particularly in relation to the making (inaudible) interactions taken in the investigation?---Yes.

As technology has advanced, different means have obviously been adopted in pursuit of achieving what is effectively quality record keeping in relation to those types of matters?---Yes.

A classic example of that is body-worn camera footage?---Yes.

That's a classic real time observation of what's going on on the ground?---I agree.

And in terms of that accountability, what we're trying to do is ensure that if anyone comes to being in a position of reviewing what exactly had occurred at any given point in time in the investigation. They've got all the tools to be able to look at that situation as clearly as possible and say what happened, how did it happen and where did it happen?---Correct.

And no doubt, that would have been a clear focus for you in your time at the Crimes Corruption Commission in Western Australia when you were reviewing instances from a whole range of sources?---Yes.

You would also be familiar, given your vast experience, with the important work the expert is for in the criminal justice process?---Yes.

And no doubt, you would have experience over your time as a police officer and the process by which expert evidence is ultimately obtained?---Yes.

You obviously understand the importance of ensuring that an expert, when retained to give evidence in a criminal investigation, is both independent and impartial?---Yes.

In other words, he can bring an impartial mind to the opinion that they are ultimately asked to give in relation to a particular issue?---Yes.

And in that context, what you're trying to do, is effectively say, (inaudible) material. You (inaudible) objective view point on this particular issue?---Yes.

So you can reach a conclusion, effectively, in terms of whether a particular fact you suspect might exist, does in fact exist, or a conclusion that you suspect might be reached, can in fact be reached?---Yeah what's the question, sorry?

What you're ultimately trying to do is confirm whether a suspected fact or conclusion can in fact be reached?---We're trying to get expert evidence or material to suggest what has occurred.

When you say "suggest what has occurred", you're ultimately seeking their opinion as to whether it has or hasn't occurred?---Yes. An opinion that goes to trial, and is tested through the rules of evidence.

And of course, you don't ultimately seek out an opinion just to simply confirm your suspicion. You want an objective opinion, that will confirm whether it does or doesn't?---Yes.

You're not coming to these things with a closed mind I presume in relation to how you conduct your investigations but ultimately (Inaudible) perceive when something is suspected, whether the evidence does in fact support that suspicion?---Perhaps you could make your statements, and then ask me the questions, rather than drag me along saying, yes, yes, every – every time you make a statement.

Well - - - ?---Say what you got to say and ask the question, if you don't mind.

- - - well I've asked the question. And I'm going to ask it again. What you're ultimately looking to do - - - ?---Mm mm.

- - - is confirm whether a suspicion is in fact validated or not?---We are looking to get expert evidence, to confirm what the expert says.

Correct. And to follow up on my – on my question that I asked you previously, you don't effectively come to these types of issues with closed minds in a police investigation. What you're ultimately hoping to do, is to gather evidence which will assist you in understanding whether in some cases, a charge is actually made out or not, as a prima facie case?---Yes.

Right. You understood that expert evidence in the context of this investigation was going to be very important?---Yes.

And I think early on in this investigation, at around about 13 December 2019, there were discussion that were being had in terms of the process of obtaining expert evidence, and the importance of that expert evidence (inaudible) - - - ?---Yes.

- - - in the JMC meetings?---Yes.

In one of the notations that we have of the JMC meeting held on 13 December 2019, there are some observations that are attributed to you, having been made within the course of a discussion about forensic matters and expert evidence. And just before I come to that, (inaudible) subsequent needs?---Yes.

And it's a process isn't it, that when you produce these minutes, they're raised like a company director meeting - - - ?---Yep.

- - - the minutes are produced, and everyone agrees that they are accurate?---That's correct.

Now, what's attributed to you is this.

THE CORONER: You need to take us to the brief reference, Mr Merenda.

MR MERENDA: I'm sorry, your Honour. The brief reference is 5-15 and (inaudible) it's at the bottom of page two, following page three.

Now these words were ultimately put to you, as comments, in relation to expert evidence.

DR DWYER: Do you want that shown to the witness, Mr Merenda, because we've got it in hard copy?

MR MERENDA: (Inaudible) - - - ?---I – I'm happy for you to read it.

THE CORONER: So it's the bottom of page two?---Yep.

MR MERENDA: Now you'll see that it says there, "NT PFES in leading the prosecution, have to prove beyond reasonable doubt" and it's meant to say, "beyond reasonable doubt", but "doubt" is excluded. "And on the issue around justification, authority and response, as it relates to the incident itself, expert evidence as to that authority and response is imperative. NT PFES need to provide critical evidence, evaluation on the officers conduct to avoid any misinterpretation. NT PFES must lead this critical evidence." Now, in relation to this particular matter, (inaudible). Rightly or wrongly a fast decision was made in relation to the decision to charge Constable Rolfe (inaudible) three days - - -

DR DWYER: Well I object - - -

THE WITNESS: Can I object here? Sorry, sorry, your Honour. Sorry, your Honour.

DR DWYER: It sounds like Mr Anticich hasn't answered the question. But incorporated within a long question is a fast decision was reached and blah blah blah. Whether or not it's a fast decision or a slow decision, is a matter of subjective

interpretation. It may well be said that three days was not fast enough. So if my learned friend could just put the time frame.

MR MERENDA: He (inaudible).

DR DWYER: Yesterday, what we heard, was the number of factors that went into the considerations, prior to the charging of Constable Rolfe, and the significant conversations that occurred, leading up to that. So I just ask my friend to bear that in mind, if a proposition is going to be put to the witness.

MR MERENDA: I'll deal with it in this way.

You charged - - -

THE CORONER: Probably that the – whether you classify it as fast or slow, is probably not relevant, Mr Merenda.

MR MERENDA: If your Honour will appreciate I was just trying to (inaudible) questioning process to get to what then is the point. We are not making a decision one way or the other, in terms of whether it was too hasty or otherwise.

THE CORONER: Well then we don't need to have the word - - -

MR MERENDA: I can miss the word that's fine. I can simplify by putting this.

You ultimately laid the charge on 13 November 2019 against Zach Rolfe?---A charge was laid, yes.

Right. You didn't have any expert evidence at that point in time in relation to whether the force used by Constable Rolfe was excessive?---That's correct.

(Inaudible). Going by what you put here on 13 December 2019, or (inaudible) to you in the context of that meeting, you understood that one of the critical issues in the case against Zachary Rolfe, was the obtaining of evidence to confirm one way or the other, whether Zachary Rolfe's use of force on 9 November 2019, was excessive?---Yes.

Particularly in the context where Zachary Rolfe, as we know, House 511 is confronted with a situation where he was stabbed, and was effectively confronted by a person who was armed with a weapon?---Very graphic description of what occurred, but yes.

Those were the facts that you were ultimately considering when you came to consider the question of not only the charge in terms of the material that needed to be put before (inaudible) - - - ?---That's a version, yes.

But they were matters that were ultimately (inaudible) weren't they?---Yes.

And so, in the contest in this case, where the use of force arose, in the context of an officer discharging duties in the course of his police work, the question was ultimately going to become, or one question was ultimately going to become, whether his response was consistent with training, and the policy policy. And whether it was – I'll just ask that question first. Whether it was consistent with training and police policy?---It was to be considered on whether it was lawful or unlawful. Whether he murdered him, or whether in fact it was an act of self-defence.

And one of the issues that ultimately needed consideration, you understood, was whether his conduct in discharging the weapon, in the way that he did, was consistent with police training and policy?---I would suggest that was an element, but I come back to what I say, was the discharge lawful in the context of the law as we understand it. Did he murder that man, or did he kill him in the defence of himself or another.

And we all understand that. But I'm just trying to break it down to some of the specific aspects that need to be taken into account. So beyond training and policy, and this may coalesce with the observation you just made a moment ago, you were concerned with an opinion about whether Zachary Rolfe's response to what occurred was proportionate and reasonable in the circumstances that confronted him on 9 November 2019?---I agree with that.

That was criminal evidence that ultimately might swing one way or the other, in terms of whether the charge was properly laid at all?---No I disagree. He had been arrested. He had been charged. The – the issue of this expert evidence goes to no point other than reliance on consideration for a conviction or otherwise. So to try and say now, that somehow we're trying to reverse engineer the – the advice to satisfy the arrest procedure, is that what you're saying?

I haven't put that yet. If you listen to my question - - -

MR BOE: (Inaudible).

MR MERENDA: Well I haven't (inaudible) at all?---Well it sound - - -

You said on 13 December 2019 expert evidence as to that authority and response is imperative. I'm ultimately just trying to get to the importance of this particular evidence.

THE CORONER: It's a question of what it's imperative to. You're putting a proposition, are you, that it's imperative to the charging process as opposed to imperative at some other point in time in relation to an evidential use at some point?

MR MERENDA: I'm not putting that, your Honour.

THE CORONER: Okay. I'm just - - -

MR MERENDA: I'm not saying whether the (inaudible) day at a time, a continuation of the charge might have been dependent upon the nature of the evidence (inaudible).

THE CORONER: It might have been. Why don't you put that question. You're dealing with an expert. So why don't you ask the questions that you actually want the answers to, rather than just seeking agreement with a line of reasoning.

MR MERENDA: Because I'm laying the foundation that I'm entitled to put the cross-examination (inaudible) it goes to a whole host of issues in relation to this Coronial inquest and with the greatest of respect, what I'm trying to do is establish an understanding of the importance of this particular piece of evidence, which as your Honour knows, comes with (inaudible) later. So that's what I'm doing. And if your Honour would allow me to do that.

THE CORONER: Well I have been allowing you to do it, but I believe – and maybe I misunderstood your question – but I understood your question to be going to what this witness identified suggesting that some later piece of evidence somehow undermines the decision that was made to charge at an earlier point in time.

MR MERENDA: That's not what I'm suggesting at all.

THE CORONER: Okay.

MR MERENDA: (inaudible) your Honour's made it quite clear (inaudible) investigate the decision to charge, so (inaudible). So I'll clarify (inaudible).

THE CORONER: I don't have an anxiety over it, Mr Merenda.

MR MERENDA: Sorry, I didn't mean to put it that way, your Honour. In terms of (inaudible) said I was going somewhere (inaudible).

THE CORONER: No, I'm not concerned about you going somewhere that you shouldn't be going. I'm happy for you to explore this, but we are dealing with an expert and I understood that you were suggesting that a later piece of evidence should somehow have been obtained before a decision was made to charge. And as I understand it, it's this witness's evidence that that later piece of evidence was not required at the point in time when charging decisions were made.

MR MERENDA: That's what I was going to say.

THE CORONER: Okay. Well let's see where you are going.

MR MERENDA: Now where I was ultimately taking you to was the importance of this particular piece of evidence in the context of this investigation. Now before we just have that dialogue, I was taking you to the final words in that paragraph that I quoted to you, which was that the expert evidence (inaudible) authority and (inaudible). Now obviously that's in the context of whether the prosecution in the previous case

beyond reasonable doubt (inaudible) immediately before those words in the paragraph (inaudible)?---I would suggest it just says that the obtaining of that evidence is important.

That's what you mean by the words imperative?---I think so.

NT PFES must lead this critical evidence?---Yes.

Now earlier on in the piece there was a police officer called, Sergeant Barram who was ultimately brought in to provide some local expertise in relation to the use of force on 9 November 2019 (inaudible)?---Yes.

And he was someone who was raised or (inaudible) I believe late November, early December 2019, so commenced work in preparation of these (inaudible)?---That sounds right, yes.

Throughout that period you were involved in overseeing and continue to oversee Coronial aspects and the criminal aspects as the overseer generally of the HR or investigation?---Yes.

In January of 2020, it's true, isn't it, that you had a number of conversations with the Coronial team, if I can call it that, in relation to what I'm going to refer to as non-compliance with (inaudible). You understand what (inaudible)?---Yeah, yes.

And that was repeated, wasn't it, on a number of occasions (inaudible) January 2020?---Yes.

I believe that one of those occasions was on 19 November 2019 when there was a reiteration to you of the need for a gold standard investigation (inaudible) witness statements?---Yes.

I think on 22 November 2019 there was a discussion (inaudible) and I believe there was some discussions about distinguishing this particular investigation from other investigations that had been the subject of (inaudible)?---Yes.

An investigation called (inaudible)?---Yes.

On 15 January 2020 there had been a conversation where those concerns about senior police not having provided statements were again raised and the point was made about whether the Coronial team itself needed to be involved or the Coroner needed to be involved in this issue?---What's your question?

There was a suggestion, wasn't there, from the Coronial team that in relation to the non-provision of statements there was a suggestion about whether the Coroner actually needed to be involved in ensuring those statements were provided?---I believe that's correct, yes.

Again in late January, 29 January 2020 there had been an assurance given by you that there were no difficulties with the hierarchy providing statements. And as I understand it with the exception of only the AC in Alice Springs?---Yes, correct. To clarify, my understanding was that it was not that they were unwilling, there were other priorities that I think distracted them from their ability to do it other than the Assistant Commissioner, that's correct.

And that was the representations made on 29 January 2020?---Yes, correct.

The Assistant Commissioner referring to it there as a (inaudible)?---Correct.

And that was in the context where she had raised issues about effectively being voluntarily compelled to provide a statement (inaudible)?---Correct.

Now all of those discussions occurred in January. In April of 2020 you had a meeting with Superintendent Foley, didn't you, on 16 April 2020?---I think – I believe so, yes.

When you say you believe so, do you have any recollection at all of that meeting?--- There were a number of meetings. Without reference to my previous affidavit, if I've said it in that then I did. I did. I can't recall individual meetings, to be frank.

In terms of what you do remember, do you recall around about April 2020 (inaudible) raising issue with you about tainted evidence in relation to Sergeant Barram?---I never heard the word tainted evidence.

Did he raise some issues with you in April 2020 about concerns that he had about Sergeant Barram's expert report?---Yes, he did.

Now Sergeant Barram provided his report in March 2020, hadn't he, his first report?-- -Quite probably, yes.

And so do you have any recollection at all of what you raised as a matter of concern at that time?---There was an issue that percolated over a time and I think subject to a number of meetings where he believed in the statement that Barram provided. He referred to a training program – and I won't try and recount it, because I get it wrong every time, DIAMO plus P or something to that effect – and that it had been superseded by another training module, I understood.

And you're referring there to, I think it's called D-I-A-M-O plus P?---That would be correct, yes.

Now he also raised, didn't he, at around about that time, the question again of an executive committee had (inaudible) Charwell providing statements?---Quite probably, yes.

Again, that's going back to the January point, there's some (inaudible) and those statements being provided by executive members of Operation Charwell?---Had been did you say?

Had not been?---Perhaps save some time. Ultimately those statements were gathered. All of them were provided. So I don't know – is there an issue with the delay in the provision or the non-provision. Because I don't know why – why we're spending – making an issue of this aspect, to be frank.

Well one of the things was, wasn't it, that you had then asked and impressed upon you that there was a need for executive members of Charwell to provide statements upon (inaudible) so that the Coronial team had a clear understanding of the process that had been indicated in the early stages of the investigation of criminal events?---Yes.

That didn't happen. Look back along this point that eventually they were surviving, the point is this incident occurred in November. By the end of January the number of requests made of you and checking effectively as to where the statements were. Come April, it's still the case isn't it, that no statements have been provided?---And the impact of that?

Well, I just want you to comment on - - -

DR DWYER: Well, I object, your Honour, I was just about to, what is the point? Parties have 20 minutes to cross-examine these witnesses. I deliberately curtailed the questions that I would ask of this witness so that we can get through both witnesses today, so that we can get this inquest finished in a desirable time frame, if possible, particularly given the disruptions that we have had to date. Mr Merenda has to focus the questions, with respect, on something that will assist your Honour in this inquest.

THE CORONER: Well, I am wondering how much time he has got left to do that.

DR DWYER: 25 minutes is the time frame already spent.

MR MERENDA: Well that might be right and there might be a time limit for cross-examination but this is very important.

THE CORONER: Then get to the point.

MR MERENDA: Well, I cannot circumvent my cross-examination, your Honour, by bridging it completely. I won't deal with foundations which is - your Honour will see in my (inaudible) in terms of how this relates and what (inaudible). So I will make a point.

DR DWYER: And can I just say this - would you mind - could I ask my learned friend, through your Honour, to respect those time frames so that if further - if more time than 20 minutes is required would my learned friend please ask for it. You will

note that Mr Boulten sat down when he clearly had further questions, because the time frames are being respected. Wherever possible that has been done. Could I ask my learned to pay the court the same courtesy.

MR MERENDA: (Inaudible) my clients to be (inaudible) I would be grateful for that opportunity.

THE CORONER: Well, you've got till 1 o'clock.

MR MERENDA: May it please the court.

Now, after he raised these discussions with you there was a meeting that was ultimately called to occur between yourself, Commander Dole and Commander James Joseph O'Brien and that meeting ultimately took place on 7 May 2020. Now, it's the case isn't it, that the outcome effectively (inaudible) wasn't it, there was an amendment made to the command structure for Operation Charwell on the Coronial side?---Yes.

And as a consequence of that Commander O'Brien has put in effect as a person above at - as Superintendent Pollock in the command structure, that he was in effect to report on a weekly basis to Commander O'Brien in relation to what was occurring on Coronial investigation?---Yes.

And one of the reasons why he did that was because you were concerned about possible criticisms that were being raised by Superintendent Pollock in relation to the expert evidence of Sergeant Barram?---No.

You wanted to ultimately maintain control not only of what was occurring in relation to the Coronial investigation but also in relation to what information was ultimately being provided to the Coronial team?---No.

In any event, after that particular meeting it's the case, isn't it, that you received a letter from the Coroner's team and in particular Mr Kelvin Currie who was at that time counsel assisting the Coroner?---Yes.

That was in late May 2019 - 29 May 2019 - sorry that was the wrong letter - sorry, your Honour. Bear with me one moment. That is the correct letter. So 29 May 2020 you received a letter after these changes that occurred when Mr Currie on behalf of the Territory Coroner?---Was it in response to a letter I wrote him?

Do you need to see the letter?---No.

Do you recall a letter reminding you of, in effect, a number of correspondence, it's the ones we've just referred to in January 2020 relating to (inaudible) statement?---I do, yes.

And in effect, this letter reinforced all those earlier conversations and effectively asked you to follow through what the expectation was with the provision of executive member status?---Yes, and that occurred.

You hadn't provided a statement as of yet, had you?---Quite probably not.

Now, in relation to what happened next, you understand Superintendent Pollock has given a statement outlining his perspective thought you in response did receive that letter?---Yes.

You understand that - he explains that you gave him a telephone call in which you were incensed by the contents of the letter and that he mainly described the call as abusive, intimidatory and threatening?---I've read his statement, yes.

He explained you repeated on several occasions, "Do you know how fucking embarrassing this is?" and importantly he says that you demanded to know what information he was passing on to the Coroner and you threatened that you would (inaudible) you would find out?---I don't recall that.

When you say you don't recall that, are you saying that didn't happen or you don't have any recollection of it now?---I don't have an independent recollection. I dare say I would have - I would've asked him what he was telling the Coroner because during the course of my perceived oversight of the Coronial investigation I had no visibility on most of the activities of Mr Pollock and the Coronial team and as time progressed and as I eventually found out, I was not entitled to. Effectively what Mr Pollock did and the Coronial team, was being directed by the Deputy Coroner and effectively my role was to sign off on overtime, approved travel and pretty much support them in what actions they wanted to undertake.

One of the reasons why you were so concerned about this letter and the conduct of Superintendent Pollock was you were concerned that he was potentially going to raise criticisms of the evidence or the way in which the criminal aspect of Charwell was being conducted?---No, not at all. In fact, in the actions that he undertook in many ways, certainly in the issue that he raised, we were able to address it prior to trial. It was found to have no evidentiary value whatsoever and ultimately dismissed - I don't think it was even taken as an issue at trial. So the work he did in a perceived view that there was some form of shortcoming or "taint" as you refer to it, we were able to address that and find there was no - there was actually no substance to it whatsoever.

You're aware aren't you, that one of the criticisms that he had led was that Sergeant Barram had a conflict of interest?---No, I wasn't.

And you read the Pollock report?---Once, I believe, when we went out. Again, I don't own the report. Can you tell me what this conflict was?

I will take you through it in a moment but I just to first, before getting to that I am going to deal with a few steps that operate inbetween. In October 2020 you're

aware, aren't you that (inaudible) the memorandum outlining various pieces of - relating to (inaudible)?---There were a number, was it the first or the second one?

The memorandum - this is (inaudible)?---Yes.

It's exhibit 711 1A, page 65.

THE CORONER: Sorry, 7-71A?

MR MERENDA: Yes, sorry, your Honour.

THE CORONER: That's okay?---I accept that there would - that the document existed and received, yes.

Right, (inaudible)?---No.

THE CORONER: Sorry, which page?

MR MERENDA: Five.

THE CORONER: Thanks.

MR MERENDA: (Inaudible) of memorandum that came out in October 2020 related to the evidence of Sergeant Barram?---I don't independently recall it but it does look like a document, albeit unsigned. And certainly the content is familiar to me but I – yes.

You're aware, aren't you, that there were criticisms that were being (inaudible) by Superintendent Foley about the competency or expertise of Sergeant Barram in relation to the issue that he was ultimately (inaudible) to consider?---I think it went to the particular issue relating to the training program, what it was called and whether it existed in its current form or not. I don't know that – I don't know that he necessarily attacks the competency of Mr Barram particularly.

But you knew that when he was referring to what Foley was putting to you was the same issues that were then (inaudible) for the purpose of providing his opinion were outdated, potentially outdated?---Yes.

And hadn't been the subject of training at the time that Zachary Rolfe was actually trained to become a police officer?---To that effect, yes.

That was one of the criticisms??---Yes.

So there was a question about the contemporaneity of his knowledge in terms of what was going on at the time Zachary Rolfe became a police officer and then became (inaudible)?---(No audible response).

Now after that, it's the case, isn't it, that you ultimately determined that the Coronial (inaudible) provided to the Coronial team prior to that would be suspended in effect until the conclusion of the criminal matters?---The assistance, I'm sorry?

You suspended in effect the investigations (inaudible) in late October 2020?---There was a period where as a consequence of my concerns regarding the Coronial matters traversing evidence that was yet to go to trial, I did for a period I believe order that the Coronial investigation be suspended. I think it was for about three days, two days.

When you say concerns about the way in which traversing criminal investigation, what was so significant in (inaudible) those three days that required the suspension of the Coronial investigation?---I had to consider what was going. I thought it was totally inappropriate. I have never experienced a – well it's unusual to have a Coronial investigation running concurrent with a criminal investigation. But before a trial, before a prosecution goes before a court to have this type of advice coming across, in my view, was complicating and of concern. So I had to consider my position and seek advice on whether this was appropriate. The issue I raised in relation to this evidence being gathered by the Coronial investigators, I had no problem with it. And in fact my issue was always that it could be gathered and it could be presented to the Coroner. But it should not be done while a criminal investigation is extant. It is underway and a prosecution, a matter before the courts, was to be delivered. So why this was occurring now was highly inappropriate.

So I just want to go through that in a little bit more detail. Because earlier in your evidence you spoke about in the context of (inaudible) about the importance when someone says something while they can do something about it. Now I'm just trying to understand the way in which you're trying to separate – to give you an example – why you want to separate out enquiries into the competency of this expert opinion and separate that from the process because what seems obvious from the way in which Superintendent Pollock was going about this is that he was trying to identify what he considered were serious (inaudible) of some of the expert evidence that's been relied upon by the police in relation to the (inaudible) report (inaudible). Now it's not the case, is it, that you get an expert opinion and you know that there's some defects and you simply put them to one side and look the other way as you (inaudible) but you didn't do that?---That's correct.

So in that context why was there something so wrong about Superintendent Foley identifying (inaudible) at the time the criminal process was being undertaken, which as you acknowledged, some of which were accepted at a later point in time?---Okay. So let's see what happens as a consequence after due consideration I raised the suspension. I think I might have written to the Coroner and exercised that this fact had been raised and to proceed. But what I also did – and I don't know if it was this report or – I requested – I don't know whether this was the report I requested from Mr Pollock or there was a further report. I referred that to be reviewed. It went to Detective Superintendent who took that – looked at that report, took it to the prosecution team. The prosecutors were somewhat befuddled as to why Mr Pollock was dabbling with this particular aspect of the criminal evidence. However, having

regard to that fact I received a report that came back effectively addressing the issues that Mr Pollock identified in the report and we moved forward. Ultimately that material, the correspondence, my interim suspension, my then lifting of it, was all released, it was disclosed at court, the prosecution. I just don't have any difficulty or see any issues that arise as a consequence of this.

You say that but on a number of occasions you took steps to try and effectively (inaudible) Superintendent Pollock from raising criticisms in relation to Sergeant Barram's evidence?---I took steps so that we didn't pervert the course of justice, we didn't undermine a criminal prosecution on which a statement had been proffered and now we had this material, which conveniently was made or leaked to the defence and subject of a subpoena. You know, this was a report of convenience that assisted your client in his plea for innocence.

DR DWYER: And ultimately, your Honour, just if there is going to be another series of questions, my learned friend has to make it clear how it would assist your Honour in this course of enquiry. Ultimately the reports were disclosed to the defence and so that issue has been dealt with. My learned friend has put all the propositions, in my respectful submission, that could possibly be put to this witness about that.

If there's another line of enquiry I just ask my learned friend to clarify how it assists this court.

MR MERENDA: Well that's a matter for submissions, so.

DR DWYER: Well it's not a matter for submissions, with respect, is the purpose of my objection. The evidence we are hearing now has to be targeted and relevant and within scope. And the reason that I rise to my feet is because we have a day to get through Mr Anticich and Mr Pollock. We still have Mr Casseldon then to ask questions and Dr Freckelton.

MR MERENDA: (inaudible).

THE CORONER: Well that was the absolute. If you can finish before then, that would be preferable, but that's your absolute, if you've actually got fresh material to deal with.

MR MERENDA: I do, I do.

So in relation to Sergeant Barram, I just want to understand some of the reasoning that operated on your mind in relation to the selection of him as an expert as opposed to a suite of other experts. Now as we understand it, in the Pollock report there is a passage which is attributed to Sergeant (inaudible) which in effect raises that there'd been a discussion or he'd been told there'd been a discussion about the selection of (inaudible) expert. And he explains that he was informed by Commander Dole that affected a meeting involving yourself, Commander Proctor (inaudible) and that there was consideration given to what I'm going to refer to as a perceptual bias by expert evidence provided by Australian officers, who were

members of the Australian Police Federation. Now that was something that operated on your mind that influenced certain decisions in relation to (inaudible)?---I think it was challenging and look, I can only recount, you know, secondary conversations. But essentially, you know, the intent was to try and find an expert. The problem was getting an expert. There would be, could I suggest, a general reticence on other police services to provide an expert to give evidence in relation to the actions of an officer subject of a murder charge and the use of force.

But in that context though, one of the considerations that's been taken into account, was the possibility of perception of a bias in relation to members of the Australian Police Federation?---I don't – sorry, what? The Australian Police Federation?

Correct.

THE CORONER: I don't think he understand the question?---Who are they?

MR MERENDA: Well this is something that was put by Pennuto.

MR FRECKELTON: It's irrelevant for that to be put before the witness that your Honour's not heard, your Honour.

MR MERENDA: Page 140 - - -

MR FRECKELTON: No, the – (inaudible).

THE WITNESS: You talking about a National Police Federation?

MR MERENDA: I'm quoting (inaudible) Pennuto so and - - - ?---And sorry, was again?

Sergeant Pennuto?---Yeah, what was the term you used?

He used the term, The Australian Police Federation.

THE CORONER: Is it a 140 - - -

MR MERENDA: 144.

THE CORONER: 144 of the - - - ?---I think – I think the organisation you're talking about, but it's not – I didn't know it as that. And where – where sorry on the document?

MR MERENDA: At 2.36 pm, 7 January 2020, "I spoke with Acting Commander Dole"?---Yep.

You see that?---Yes I - - -

It goes down, if you look down there's a sentence, "And in that context, I was informed that it was their view the Australian Police Federation comments had the potential for compromising any assessment provided by (inaudible)" because there (inaudible) association (inaudible). Did you understand that a police association operating at a national level had made comments that (inaudible) appropriateness of Zachary Rolfe's behaviour on 9 November 2019?

MR FRECKELTON: I object to this line of this questioning, your Honour. Attempts have been made to pursue this issue previously. What's taking place is that our learned friend is asking questions about a report which relates to a response received from Commander Dole, and which was allegedly inconsistent with what was expected. I know the witness has given evidence in front of you. This line of questioning fundamentally misconceives the role of this witness. He had overall oversight and responsibility for what was taking place in terms of the criminal investigation. He had some measure of oversight, and he's explained that to you, in relation to the Coronial investigation.

But to start asking him questions about what somebody else said, may have been the influence of the Australian Police Federation, in respect of actions that other people took, in our respectful submission, has no potential, at all, to assist your Honour's task.

MR MERENDA: Well with respect, we disagree. I was informed that it was their – this is being attributed in (inaudible) evidence, something that occurred (inaudible) Mr Anticich, and Commander Pollock. It goes to the question of ultimately the decision-making process in the selection of experts, particularly in (inaudible) Superintendent Pollock says about the issues he says (inaudible) Sergeant Barram's evidence.

THE CORONER: I don't know that – does he use the word "plagues"?

MR MERENDA: Well I'm using (inaudible).

MR FRECKELTON: (Inaudible) your Honour.

MR MERENDA: Well (inaudible) no (inaudible) Mr Boulten (inaudible).

THE CORONER: The issue, as I understand it, is that he had a concern that there was a reference to an outdated policy. And that gave rise to perhaps, on his part, a more generalised concern. But that issue was raised directly with Officer Barram when he was here. And he explained the reasons for him referring to DIAMO plus P. And answered, that whilst those actual letters are no longer used, the training is the same.

MR MERENDA: That might be right, your Honour. He may have said that. But that's not what Pollock says, who's in charge and (inaudible) critical experienced Coronial investigator, (inaudible) why there were problems with Sergeant Barram. If you go to page 146 of that report - - -

THE CORONER: Are we going to the Proctor Report?

MR MERENDA: - - - (Inaudible) questions (inaudible).

THE CORONER: Okay.

MR MERENDA: Detective Senior Sergeant Barram was selected to provide critical evidence (inaudible) evident that he was subject to confirmation bias. (Inaudible) - - -

THE CORONER: That's an opinion.

MR MERENDA: Correct.

THE CORONER: Okay. So you can ask questions about whether or not this witness agrees with that opinion, disagrees with that opinion.

MR MERENDA: Well, with respect, that's an unfair constraint in my capacity to possibly (inaudible) to put questions along with established facts that go to supporting them.

THE CORONER: Well, I don't know that your questions do establish facts.

MR MERENDA: Well, your Honour, I can't take it any further than I have. I've been interrupted by my friend, who is interrupting me from putting this opposition (inaudible).

THE CORONER: If there is a fact that is established, you can identify the fact for the witness and then ask a question. But what you're asking here is, there's a passage in this document or this court which you say, as I understand it, this witness would have been aware of at the time because he was part of a group of people who were discussing this issue.

MR MERENDA: I want to ask him then whether he then became part of that conversation (inaudible).

THE CORONER: Ask him then.

MR MERENDA: Well, that's what I was doing - - -

THE CORONER: No, but - - -

MR MERENDA: - - - before I was interrupted.

THE CORONER: Okay, but it's the process that is unnecessary and is delaying us. There is a passage here. You can ask him to read it. You can suggest to him that it appears, on reading that passage, that it refers to a meeting that he was involved in

and then you can ask your question.

MR MERENDA: Would you please look at page 144 and the passage that I just referred to you and read that to yourself?---144?

DR DWYER: I think it's 146?---I thought it was 146 as well. That's what I was looking at.

THE CORONER: No, it's 144?---Sorry.

It's the passage in italics just above the middle - - -?---Okay, right, okay yep.

- - - of the page. Yes, I've read it.

MR MERENDA: Right. You see the comment that's made there in relation to the (inaudible) presence of you and meeting with Commander Proctor and Commander Dole?---Yes.

Can you recall having a meeting in relation to the (inaudible)?---I don't recall, but, you know, probably that did occur.

Do you recall having discussions about what you considered to be a perception bias in relation to Australian police officers giving (inaudible) their evidence?---No, I do recall a reticence on the part of the Australia police forces providing a witness that would testify against another serving police officer discharging a firearm and killing someone in the course of their duties. That's what I recall.

So, it had nothing to do with the potential for there to be – that a perception bias would be played out about the use of force that was ultimately used by Constable Rolfe on 9 November 2019?---I do not recall that aspect. My recollection was no police force wanted to step forward and be in a position to give expert evidence testifying in relation to another police officer discharging a firearm and killing someone in the course of their duty.

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

THE CORONER: Yes, we'll adjourn for lunch.

ADJOURNED

RESUMED

NICHOLAS ANDREW ANTICICH:

THE CORONER: Thanks, please be seated. Yes, is it – do you have some questions, Mr Casseldon?

MR CASSELDON: I don't have any questions. I think Ms Ozolins may have.

THE CORONER: Ms Ozolins.

MS OZOLINS: Yes, thank you, your Honour. It might make it easier, I can't see that far.

XXN BY MS OZOLINS:

MS OZOLINS: Mr Anticich, my name is Sally Ozolins and I am representing the Northern Territory Police Association. Perhaps not surprisingly, I just did want to ask you about the comments you made about the disciplinary proceedings. One point of clarification, first of all, Mr Boulten was asking you some questions about the time limits for progressing criminal matters against police members. And I think the proposition was put to you that there's a two-month time limit?

MR BOULTEN: Under the Act, offences under the Act.

MS OZOLINS: Yes, that was my point of clarification.

MR BOULTEN: That's what I asked.

MS OZOLINS: So, the s 162 of the *Police Administration Act* only imposes that two-month limited for offences which are directly related to a member's duties. Do you agree with that?---I believe that's correct, yes.

And it includes things like deserting their post and things of that nature, not general criminal offences. Now, you made a comment in relation to disciplinary processes generally, bearing in mind, I haven't had the benefit of seeing the outcome of the review that you did, nor the review that's apparently been done subsequent to that, but you made the comment that the Northern Territory Police Association is fighting against you all the time. Can you just clarify or perhaps expand on what you meant by that?---Yes. Essentially, the position in just about all disciplinary matters, certainly the ones that I was aware of, was that they were defended. So, in other words, every single matter involving an allegation of misconduct or otherwise was a plea of not guilty, I guess, or a contention that nothing was done wrong. There was never an event, it would appear, that we saw an officer concede that in fact there had been something they did that was inappropriate or incorrect or improper.

Sure. And are you saying, in your experience, that was every single matter where there was a disciplinary allegation, if you like?---I cannot recall in the period that I

was here, there may have been an occasion, but my general understanding was every – that I can recall, every matter was contested. I can't recall an uncontested outcome, I don't think.

So, you'd be aware from your time working in this space that there are disciplinary procedures that can be dealt with under 14C of the *Police Administration Act* which is minor matters - - -?---Yes.

- - - where a prescribed member, if you like, could deal with minor matters by a caution or counselling or things of that nature. And they weren't considered part of the serious disciplinary process that comes under Pt IV of the Act. You agree with that?---Yes.

And then obviously serious breaches of discipline are dealt with under Pt IV. And I won't go through the whole thing but just briefly, ordinarily you would have a prescribed member, that is a senior sergeant or higher who forms a belief that a member has breached a provision or committed a breach and then a s 79 notice would be served on that member outlining the breach?---Yeah, yes, I acknowledge the process, yes.

And after being served with a notice a member has a right to respond?---Yep.

And then after their response is submitted, the prescribed member can either accept or not accept the response and take action accordingly as it's provided for in the Act?---Yep.

Were you aware – I'm sorry, I should just go on then. So if a member's not satisfied with the decision of the prescribed member, there are rights of review, aren't there?---Correct.

And then following that there are rights of appeal for both the Commissioner or the delegate and the member?---Yes.

To an appeal tribunal. So were you aware that in about 2017 the then Commissioner issued a notice to all members that 14C would effectively not be utilised?---I was.

So after that announcement, if you like, all breaches of discipline were dealt with under Part IV as serious breaches of discipline?---That might have been a consequence, yes.

Yes. So regardless of how minor a breach might be, all members were subject to this disciplinary proceeding in Pt IV?---Mm mm.

And you would agree, wouldn't you, that the *Police Administration Act* specifically enshrines procedural fairness within the legislative framework, so members are legislatively given the right to a fair process, the right to respond, the right to be heard about allegations?---Yep.

Yes. Now with the review that you conducted – and I'm not sure – have you had an opportunity to see the most recent report that was references this morning?---No.

No. Well at least with the report that you did, did you suggest in any way that the doctrines of procedural fairness ought to be abolished in any new discipline regimes?---No, I don't think so. Look, I can't recall the document but I certainly wouldn't attack a principle like that, no.

So you agree it's a right?---Correct.

It's something that has to be available to members. It's also the case, isn't it, that from time to time prescribed members will get it wrong?---Correct.

So it's proper for a member to have a right to put, forcefully if need be, their rights and perhaps if there's been a procedural issue or an error made that there should be a right for the member to challenge that and to ensure that their matters are dealt with properly?---I don't disagree.

You'd also – would you agree, that many disciplinary matters for various reasons take a long time to finalise from the time the prescribed member might identify an issue to finalisation of that matter?---A common bugbear across many jurisdictions.

Sure?---It's a common complaint.

And the effect on members, isn't it, that while they're subject to disciplinary proceedings they're inhibited in their capacity to seek transfers to other positions?--- I'm not sure what the policy is in the Territory but certainly and it does affect the individual of course with that hanging over their head.

Sure. And sometimes it can stop them being promoted?---That's a general principle applied mostly, yeah.

So as long as lengthy disciplinary proceedings are afoot, the members are really in a position of disadvantage?---Yes.

So you'd agree then that it's in everybody's interest that there be capacity for matters to be dealt with expeditiously whilst protecting the procedural rights and fairness of duty members?---Absolutely.

Thank you.

I have nothing further, your Honour.

THE CORONER: Yes, any other questions?

DR FRECKELTON: No questions here, your Honour.

THE CORONER: No.

Thank you very much for returning to the Northern Territory and making yourself available and also providing statements in relation to this inquest. It's appreciated?--
-Thank you, your Honour.

WITNESS WITHDREW

THE CORONER: Dr Dwyer.

DR DWYER: Thank you, your Honour. The next witness is Mr Scott Pollock and I call Mr Pollock. Can I just make this point as Mr Pollock's making his way into the witness box. I've been advised by his counsel that as previously advised, because he was scheduled to give evidence today, he has a plane to catch tomorrow. Mr Casseldon has a plane to catch back to Sydney tomorrow and of course the Supreme Court proceedings are listed on Wednesday and Thursday and counsel at the Bar-table are involved in, or at least some counsel, including I believe Mr Merenda and Mr Freckelton.

As a result of that I'm going to truncate the questions I ask and can I ask that my learned friends be mindful of the 20 minute restriction. If any time beyond that is desperately required could I just ask that they seek your Honour's leave.

THE CORONER: Yes.

Are you retired, Mr Pollock?

MR POLLOCK: Yes, you can call me Scott.

SCOTT POLLOCK, affirmed:

XN BY DR DWYER:

DR DWYER: Sir, could you please tell the court your full name for the record?---It's Scott Allan Pollock(?).

And where are you currently residing, in the Darwin area, is that right?---That's correct.

You were a Territory police officer for many years, as set out in some statements that you have assisted the court with?---Yes, I joined in 1984 as a 20 year old.

Joined in 1984 as a 20 year old?---Correct.

And what year did you retire?---This year.

This year. Many decades with the Northern Territory Police Force?---That's correct, yes.

Nearly four I think. You have provided two statements to assist her Honour. The first is dated 3 August 2022 and the second 21 July – I withdraw that – 21 November 2022.

They appear in your Honour's brief of evidence at 7-11 – 7111A and 7111AA.

In your first statement you note with respect to your policing experience you have over 25 years service as an investigator, is that right?---Yes, at least.

And you've appeared multiple times before the Northern Territory Coroner, that is the previous Northern Territory Coroner, Mr Greg Cavanagh to give evidence?---That's correct.

And you were the officer in charge of a number of significant critical incident inquests, is that right?---Yes.

Including the inquest into the death of Kumanjaya Briscoe(?) in the Alice Springs Watchhouse in 2013 the inquest was heard?---That's right, yes.

You have also presided over a number of homicide investigations as part of your role as criminal investigator in the Northern Territory?---Yes, many.

And I appreciate your normal modesty in this regard, Mr Pollock, but you're aware, aren't you, that you enjoy a reputation in the Northern Territory as a highly skilled and highly committed criminal and Coronial investigator?---As part of a great team, yes.

On 12 November 2019 you were appointed the officer in charge of the Coronial investigation with respect to the death of Kumanjaya Walker, is that right?---That's right, yes.

And as a result of that role you produced a number of reports in draft leading up to what would ultimately be your final report, is that right, or would have been your final report?---Are you referring to the draft Coronial report?

That's right?---Yes, I did.

Can you just remind the court, what is the purpose of an OIC report provided for the assistance of the Coroner in the inquest?---Well it's really to give the Coroner an appreciation of the facts, circumstances that led to the event involving a death in custody and also examines the issues pertaining in and around the investigation into those facts and compliance or non-compliance with policies.

And is it part of the role of the officer in charge to make a series of recommendations for the consideration of her Honour which might ultimately find their way into the Coronial findings?---Yes, but rarely do I make recommendations.

You point out any issues that arise and tend to leave that for the Coroner and her team, is that right?---Yes, unless I feel strongly about an issue and there's good grounds for a recommendation, otherwise I'll just leave it open for the Coroner to consider.

And part of the role of the investigator is to gather evidence which will ultimately go into a brief to be served on all parties who appear before the court?---That's right.

In terms of your role, we have received some evidence that effectively, before the end of the investigation, there were other – there was another officer ultimately appointed to over – to be the officer in charge?---Yes.

The final officer in charge is, as we understand it, Superintendent Lee Morgan. Prior to him, it was Superintendent Proctor?---Commander.

You then – Commander Proctor, I beg your pardon. Did you ever complete a final version of an officer in charge report?---No.

Is it – is it the case that the number of documents we have under your hand in the brief of evidence, are in effect, drafts?---Absolutely.

And you noted in one of the statements prepared for her Honour, that you were able to identify the hand written notes of Commander Proctor, I think, on some of your drafts. Is that right?---Yes, that wasn't shown to me previously of course.

Okay, so what you – you understand that the drafts that you prepared were ultimately available for the assistance of Commander Proctor, when he put in his final report?---That's right, to assist him. We'd been given quite a short deadline to provide a report. So that was the purpose of my probably intervention. I had greater knowledge of course of all the facts and that's why I assisted Commander Proctor.

And have you read the final report of Commander Proctor?---It's very long, it's - - -

It's 170 pages I think it is?---Well I had to read it in a couple of parts, but I have gone over it once at least, yes.

When you read it, did you recognise a lot of your work that had gone into that report ultimately?---It was difficult, because he's a wordsmith and I'm not. But yes, it was obvious inclusions.

Thank you, your Honour, those are my questions.

THE CORONER: Yes, Mr Boe.

MR BOE: Thank you, your Honour.

XXN BY MR BOE:

MR BOE: Mr Pollock, there are just three areas that I wanted to ask you some questions about. I should say, I did introduce myself to you earlier, but my surname is Boe, and I appear with Ms Boe, for the Walker, Lane and Robertson families, who you know – you know who they are?---Yes.

Your statement from yesterday included a paragraph, par 14, which spoke about your conversations with Senior Sergeant Pennuto at the time, concerning the enhanced audio of what was captured on Mr Rolfe's body-worn video, in his conversation with Leanne Oldfield?---That's right.

Now what I want to ask you, over and above what's in your statement on that issue is this. You seemed to have noted that after that conversation, there was some acceptance by Mr Pennuto, to the words that you could hear in the audio, correct?---Yes. He rang me a few days after I raised it and agreed.

And largely accepted that your version was more complete and accurate than that which had been included in transcripts earlier?---That's the information he passed to me, yes.

Yes. Now did you follow through or whether or not that corrected understanding of what was on the audio was provided to Sergeant Barram?---No.

Do you know if it was ever?---No.

And do you know – did you think there was some utility in having discovered this deficiency in the transcript, in interviewing Leanne Oldfield, to play to her the audio, in order to see if she could better understand hearing her voice?---That was always the plan for the criminal investigation team to go back and interview her. But however, due to I say lawyer intervention, it wasn't possible.

Are you talking about her lawyers?---Her lawyers at the time..

Yes. And I'll just get to the bottom of that. Do you know the full extent of what happened there?---With the lawyer intervention?

Yes?---Not particularly. I – what I recall was that in the week that followed this event, a number of lawyers travelled to Yuendumu, and were engaged by the families as representatives. And that any contact with families have to be done through, from that time on, through the legal representatives.

Just so that there's not criticism levelled at those lawyers, of whom - - - ?---I've got no criticism of them.

- - - I was one. The – my understanding was that they wished, and I'm a barrister, I wasn't the solicitors dealing with any of the - - -

A PERSON UNKNOWN: I object (inaudible) my learned friend is counsel, he's now complaining to the witness - - -

MR BOE: No, no, no I'm just – I'm just - - -

A PERSON UNKNOWN: - - - and I'm not actually sure to what end this line of questioning is relevant to an issue for her Honour.

MR BOE: - - - well it is – your Honour, I was declaring that I was part of the team. I was simply saying I was not involved in any of those interactions.

THE CORONER: Yes.

MR BOE: But I wanted to be – have clarity, less some criticism is made, or some explanation is given, as to why it wasn't pursued.

DR DWYER: I think the answer from Mr Pollock was I have no criticism in that regard, that effectively puts that (inaudible).

MR BOE: Thank you. Thank you.

Now can I get to this, the – you would expect that – sorry, did you appreciate that the clarity about what was said by Leanne Oldfield was a critical fact in any prosecution of Rolfe?---Not so much around prosecution. It was just around getting the facts right.

Yes, but it was it a fact - - - ?---It wasn't my - - -

- - - that was relevant to the lawfulness of the entry to House 511?---Yes, and she either gave permission or she didn't.

Correct. And if she didn't, and there wasn't any other basis, that that entry may well have been unlawful?---That's correct.

Which would have an impact on liability and defences, etcetera?---Potentially, yes.

So from your point of view, because you were part of the Coronial team, you felt you discharged your obligations to that issue, by simply informing Pennuto?---Yes.

Now that goes to an issue I raised with the previous witness. There's been reforms suggested, and apparently implemented a new General Orders. Are you aware of those?---I had a quick look on my phone this morning.

Right. The – just cutting to the chase, the idea now is that there be one OIC that oversees both aspects of the investigation. And that the investigation does proceed in tandem. I can read you the precise words if you would prefer. Would you prefer that?---No, no, I – I guess I'm retired. I sort of walked away from it now and left it with someone else to sort out.

All right. The – it's just that you enormous experience. I'm just wanting to get to making sure that any changes in fact reflect what is needed in your view, to make sure that these sorts of difficulties don't arise. Do you understand?---Yes, if you get the structure right.

So the structure right. The – there seemed to be no need for there to be a designation to the police officer as being part of a particular team is there?---You might have to - - -

See, one of the issues, as I understood it, was that the complexity that arose, was that because of various views by various people as to how it should be done, it was thought that the criminal investigating team should speak to the witnesses first, and then only if they had no further need, or they thought it not necessary, I guess, that the Coronial team would come in?---That's right. I had no objection to that.

Yes, but may I suggest to you that there doesn't seem to be a need for two officers to be compiling the evidence from a particular witness - - - ?---It's - - -

- - - and that – and that – sorry?---I was just going to say, it's never happened in my history - - -

Yes, but - - - ?---My experience.

- - - going forward, if you're going to have one OIC – commissioned OIC who's responsible, they can designate a particular officer, or officers, to go talk to particular witnesses. They compile the evidence, and the point of discriminating what is relevant to Coronial only, or what is only relevant to criminal, can be done at a later stage?---Correct.

The – the last point is this. We've heard a fair bit about the difficulties that the investigators had in obtaining further experts in addition to Sergeant Barram, to give opinion evidence in relation to the use of force on this occasion?---Yes.

Now as I understand the difficulty that faced you and your team, was that, for whatever reason, other police forces were reluctant, or unwilling, to provide any of their members to provide that sort of opinion evidence?---That's not the information that was given to me.

What was the information given to you about the non-availability of another expert from Australia?---What was fed back to me was the fact that the Police Federation, or whatever you want to call them, had publically stated that, obviously Constable Rolfe had been wrongfully arrested I guess, or charged. And that it was unlikely for that reason that anyone from within Australia would be able to provide an expert opinion due to their objection through the Police Federation of Australia.

Right, yes. You would be well aware of police officers who are called and give expert evidence in a whole range of areas?---Absolutely.

Including, for example, forensic pathologists or people assisting pathologists?
---I've used experts on many occasions.

Collision experts and the like?---Yes.

And as Dr Dwyer covered with one of the witnesses the other day, when an expert comes along in that capacity, they adhere to a code of ethics that is universally recognised?---That's right.

So there would be no proper basis for an expert to decline to give evidence because the person who may be affected by that opinion may well be also a member of the police service?---Yes. The reality is we're all members of the Police Federation, so if you're going to, you know, use that as a basis for not employing an expert, then you will have no investigations against police officers.

Yes. But did you take this particular position because there was at a leadership level of a union or unions, that they were not going to allow their members to assist in providing evidence in relation to the criminal liability of Constable Rolfe?---I thought it was nonsense.

You thought it was nonsense?---Absolutely.

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

THE CORONER: Yes, Ms Morreau?

MS MORREAU: Thank you, your Honour.

XXN BY MS MORREAU:

MS MORREAU: Mr Pollock, my name is Paula Morreau and I act for the Brown Family, family of Kumanjayi Walker. I only have a couple of areas to cover with you. In your experience prior to this case, investigating deaths in custody, I understand there has been a number of deaths in custody that you have been the primary officer-in-charge of that investigation, correct?---Sadly, yes.

Yes. And there's - the appointment of a person to your position comes from any part of the Northern Territory Police Force, that is there's no a specific area or department, for instance Professional Standards, that might be dedicated to investigating deaths in custody?---No, there may be a member from that particular area who may be a suitable appointment and the example was I was working at the college when I got seconded to this operation.

Yes, so that it might be the case that someone from Professional Standards is appointed, correct?---Correct.

But it's an incidental factor, it's not always going to be someone from a particular area of the command that is appointed?---Correct.

Thank you. Now, secondly, in your first statement, at paragraph 21 you mentioned that the Police Administration Act has been under review for some years and that there was a lack of consensus between members of the Police Force and the Police Association with respect to how that Act might be amended?---Correct.

Could you explain some of the areas of difficulty that you experienced and are aware of in that regard?---I was never involved in any review, personally, yes. No.

I see. So you don't have any personal knowledge of what the issues were that have been - and the difficulties that you were alluding to in your statement?---That's right.

Thank you, your Honour, they are all my questions.

THE CORONER: Mr Boulten?

XXN BY MR BOULTEN:

MR BOULTEN: My name is Phillip Boulten. I appear for the North Australian Aboriginal Justice Agency. In your first statement at par 24 you explained that the deputy Coroner asked you to investigate whether Mr Rolfe received favourable treatment?---Correct.

And you said that it was apparent to you that he did, and you outlined a number of areas where you think that Mr Rolfe was treated favourably. The first one was that he wasn't treated in accordance with police policy with Death in Custody General Orders and was not subject to the usual investigative techniques expected of major crime investigation. What did you mean when you referred to him receiving favourable treatment by not being treated in accordance with the death in custody general orders?---That he wasn't interviewed as soon as possible - as soon as practicable.

By that did you envisage that he would be subjected to a compulsory interview pursuant to s 79A of the Police Administration Act?---No, not at all. I thought he would have been interviewed similar to all the other IRT members.

You are familiar, are you not, with the evidence that suggests that within a day or so of the shooting senior members of the police had formed at least a suspicion that Mr Rolfe had committed a criminal offence?---Correct.

Do you contend that his version should have been obtained over caution?---Not necessarily, no. Not at that early stage.

Are you familiar with the concept that if someone is suspected of committing a criminal offence, whether they be a police officer or a baker or an unemployed person, they would out of fairness be told that they are suspected of having committed a criminal offence and that they would be advised that they don't have to answer any questions?---Yes.

And that if they chose to answer questions that their answers might later be used against them in evidence at a criminal trial?---Yes, once he becomes a suspect.

He was a suspect very early.

A PERSON UNKNOWN: A day or so was the position.

MR BOULTEN: Sorry?

A PERSON UNKNOWN: A day or so was the proposition.

MR BOULTEN: He was a suspect certainly within hours of the police investigators looking at the body-worn footage, right?---About 3 o'clock on the Sunday afternoon.

So you think he should have been asked for a version on Saturday night?---No, he - - -

Or Sunday morning?---He was obviously having his injury assessed and treated.

Yes?---He actually came to the police station after that point in time but was sent away and my understanding is he came back later either that day or he certainly came back on the Monday seeking to be interviewed.

Seeking to be interviewed?---That is my understanding.

Where do you get that understanding from? I'm not saying it's wrong?---No, I get my understanding from the fact that Mr Pennuto sent him away, on several occasions.

Before he was arrested?---Correct.

What about the suggestion that has been made several times in evidence - in the evidence of a number of witnesses that it was inappropriate for him to have met with other police who were present at the time of the shooting? What do you have to say about that?---Well, based on my experience it wouldn't have happened.

Were there any circumstances in which you could imagine that it would be appropriate to allow welfare barbeque or party or get together of the pertinent players?---Possibly, but in saying that certainly those attending would have had to have committed not to discuss, obviously, the facts of the case and it would have to be a welfare issue in support of Mr Rolfe, for example.

You know the way it unfolded and what happened, what do you say about the appropriateness of that get together?---That wasn't appropriate, and it wasn't appropriate that he came to the police station on the Monday as well, wandered around the police station speaking to various members. Processes hadn't be put in place yet and by then, he was a suspect.

In that same paragraph, you suggested that he had not been subjected to usual investigative techniques. What did you mean by that? Or is it something - - -?---Police methodologies in terms of how they go about collecting evidence. I'm not sure what grounds I'm on here in terms of basically disclosing what methodologies I'm talking about.

So, you're talking about surreptitious techniques?---Yes. In any murder investigation, homicide investigation, you would be looking to throw everything at it.

Right, so you'd put in a listening device in his house or tapping his telephone?---Correct.

Perhaps use an undercover operative to engage him in discussion?---Most of what you're saying there is just standard practice now.

I'm not letting the cat out of the bag?---Well, you have.

There are other even more subtle and complex investigative techniques that have been used in homicide investigations throughout Australia over recent years - - -?---That's correct, yes.

- - - about which there is some sensitivity and secrecy?---Yes.

We presume nothing like that happened in this case. Is that right?---Presumed is the right word.

Yes?---And it wouldn't be something I would be briefed about as Coronial investigator. You know, that would be within the confines of the criminal investigation.

But you had open access, it said, to the files that were maintained by the criminal investigators, didn't you?---No, I wouldn't say that, as in the folder they put together for the prosecution. The statements, yes, but other additional ancillary information, if it was sensitive, as you suggest, then that wouldn't necessarily have been disclosed to the Coronial team.

You're confident that there was no electronic surveillance, no undercover operative and no special investigative techniques other than what we all know about?---To my knowledge, that's correct.

All right. You also, in the same paragraph, are critical of the quality of the statements that were obtained in the initial stages of the investigation because they were lacking in detail. Without going into the individual statements, what type of witnesses or statements are you talking about?---Well, to me, the most apparent one was one of the IRT members and it related to his powers of entry. Questions weren't asked around that, and it related to his injuries. Questions weren't asked about that. They were critical.

So, you're talking about Mr Eberl?---You said you didn't want to name anyone, but - -
-

But that's – it's obvious now who you're talking about?---It's Mr Eberl.

Yes. So, you have a very clear view that the two officers that entered the house did not have permission to enter the house, don't you?---Not from Ms Oldfield.

Nor from anyone else that you're aware of?---They did have an eye view, they did an eye view, lawful reasons for going inside that house.

That's a different thing though?---Oral permission, yep. If Ms Oldfield had have said categorically no, they still had lawful authority to go into the house.

They had reason to suspect he might be in that house?---They had a very good reason.

They didn't know for sure, did they?---They knew that there was a male inside the house and they'd been told that's where he had gone.

So, do you think that that would have been a sufficient trigger for the appropriate suspicion or believe to have been crystallised?---Yes.

All right. You are very blunt in the expression of opinion, that you haven't encountered an investigation as biased as this one?---Yes, I - - -

By that, you mean biased in favour of the suspect or the accused?---Not in favour.

You mean against?---Yes.

So, the bias that you just talked about, you're subjecting Mr Rolfe to a version early, you just assume would have been of assistance to him, are you?---The version that would have been of assistance to him?

You are critical of the police for not requiring Mr Rolfe to have provided a version of events very early in the investigation?---I'm critical of the fact that they didn't do it.

Yes. So, is that something that worked to his advantage or disadvantage, as you analyse it?---Well, I didn't include that, I guess, in my assessment of bias.

All right. So, that's not bias?---It's - I think falls under the category of favourable treatment, potentially.

Yes. And what about the manner in which he was dealt with before he was released on bail by the judge here on the telephone? Do you think was anything that was favourable in that process?---He was bailed by a judge.

Yes. Did you expect that there would be articulation of police concerns about him

being released on bail, if police did have such concerns?---It wasn't what I'd been tasked to investigate on behalf of the Coroner.

All right. So, when you were the lead investigator in the Coronial investigation, did you think that you ought to have been able to keep the evidence that you were gathering separate from and not accessible to the police criminal investigators?---No, quite the contrary. The criminal investigation team had full and open access to every piece of information we had and with the only information that they didn't have access to was when I was drafting the final report.

The final report. But you were happy with that arrangement? I thought that was appropriate?---That's how it was. We could see what they were doing and they could see what we were doing. It was on the same drive.

Okay?---Open access to everybody there.

You thought that was a comfortable situation?---No. I thought a better situation would be that we follow our policies and procedures and only have one area where the information was stored, and that would have been on PROMIS.

How did you express your concerns about this failure in adherence to policy?---Well, PROMIS was still in operation, but all the information came in onto the L-Drive folders and was then assessed and then transferred in part over onto PROMIS. It was a duplication, unnecessary.

Mr Pollock, in reviewing the statements that you've made and hearing – and reading Mr Anticich's responses in particular to what you have to say, it's very difficult not to draw the view that there was a very serious – serious amount of disharmony between you on the one hand, and Mr Anticich, at least, on the other, at important stages of this investigation?---There were difficult moments. But that's – I think it's been blown out of proportion. The fact that we didn't have a difficult working relationship in my mind. Frustrating at times, yes. But not impossible.

So for members of the community, especially people who have close connections to the deceased, what do you think they will think of that degree of disagreement, that's obvious from your statements?---I can't speak on behalf of the members of the community what they would think about it. This was, in my mind, just usual intercourse. In terms of what happens in precious situations in investigations. There's disagreements from time to time, and there should be de-confliction processes in place.

In one of your drafts, you considered the policing culture in Alice Springs. And you set out one example of behavioural concern in Alice Springs. Namely an incident back in 2017, that involved the then named Cordon and Containment Team, and their response to a disturbance at Warlpiri Camp. Do you remember that part of that draft?---Not particularly. I haven't had a copy of the draft at all since I've walked out the door - - -

Okay - - - ?---Some 18 months ago, so.

- - - so - - - ?---But I recollect what that's all about, yes.

You remember the incident?---I remember reviewing the PROMIS incident, yes.

And you used it as a lead in to a discussion that you were starting to draft up about police – policing culture in Alice Springs. And after outlining it, you outlining short summary of the incident at Warlpiri Camp in 2017, you describe that a use of force submission for that particular event was submitted by the senior member of the ASP CCT, stating note, “The force used was in response to community disorder the preceding evening.” And you had drafted this, quote “Despite the reviewing officer raising concerns over the use of force, the matter was finalised with a notation from the Alice Springs Divisional Superintendent ‘The general response requirements and subsequent use of weapons will be included in the SOP that will be promulgated by the end of June. Guidance will be included in regards to weapons used.’” Then your draft continues. “By 9 November 2019, the policing culture in Alice Springs had degenerated into a state where unacceptable police behaviour was allegedly being condoned” – sorry, “Condoned by supervisors and senior police management. This seems evident in the review into the use of force reports involving Constable Zachary Rolfe, conducting by Senior Sergeant Andrew Barram.”.

THE CORONER: Can you give me the brief reference please?

MR BOULTEN: I will do that in a minute, if you don't mind, because I haven't got them to hand.

This did not make its way into the Proctor Report. But I wish to ask you, what was your view about the adequacies of the supervision of use of force in Alice Springs in the 12 months or two years prior to Constable Rolfe's arrest?---Well obviously the – the commanders disciplinary review team, or whatever, who were dealing with a number of these matters, in my view, and supported by Superintendent Reeve(?) from the Professional Standards Command, who raised those concerns that I'm trying to articulate there, showed evidence that there were serious issues in Alice Springs around use of force and discipline.

Had they been addressed, as at the time that you bowed out of this investigation?---The investigation was continuing. There was a lot more work to do.

But certainly, that was the state of affairs, as you understood it to be, as at the time that you finished your role in this investigation?---That was my general belief that there were issues in Alice Springs that need to be resolved.

They were important issues weren't they?---Absolutely.

And they were, in some senses, relevant, not just to the Coroner, but relevant to the brief of evidence that was being compiled for the prosecution of Mr Rolfe, weren't they?---Well I knew the criminal investigation team were looking at propensity

evidence, or tendency evidence, or similar factors I call it. But I was well aware that they were compiling a brief in that regard.

So one of the differences between the evidence in this court, and the evidence in the criminal case, is that now there's a great deal of evidence from Mr Rolfe's phone that's made its way into the evidence here. That did not make its way into the criminal court at all. The transcript shows what the prosecutor attempted to elicit in evidence. And it's nothing like the number and depth of messages that demonstrate Mr Rolfe's inappropriate attitudes that have been unearthed in this investigation in this court. I want to ask you about your understanding about when it was, how it was, that the phone was examined, and its contents analysed. What do you know about that topic?---Quite a bit.

So, we understand that for a long time, the criminal investigators couldn't get access to the phone because Mr Rolfe had declined to assist them with the pin number or - - - ?---Correct, yes.

- - - and eventually, it was cracked, because of clever police work. And someone suggested, it was your clever police work. Is that right?---Look I'd love to take credit for that, but unfortunately, it was the outstanding work by Detective Senior Constable Kingston(?) was part of my team, yes.

When did Senior Constable Kingston figure out out to work out what the pin number was?---He's brilliant this guy, (inaudible) that said he didn't need that level of expertise, I tasked him to basically familiarise himself with the case. He hadn't been working in the Coronial team for a lengthy period. And in reviewing some of the body-worn footage, he was smart enough to pick up on Mr Rolfe hitting - - -

When was that?---It was not long before I left the Coronial team.

Can you just remind the court when you left?---It was early December from memory, yes.

2020 – 2021? 20 - - - ?---2020.

2020.

Could I have 10 more minutes please, your Honour?

THE CORONER: Yes.

MR BOULTEN: So what happened next, once the Rosetta stone was cracked?---Well we did the right thing, from our perspective, and passed that information direction to the criminal investigation team. We passed it on to the AFP who charged up the phone and punched the pin in and lo and behold, they had access to the material.

We heard here the other day that the Northern Territory didn't have an adequate download software system for the Cellebrite or similar software. Is that the case? ---Not to my knowledge. I used to manage the computer crime unit. They had their own system. I am no IT guru at all but they didn't have Cellebrite but they had a comparable system that enabled them to copy the - obviously the data.

So when you were in charge of that section did you ever have any difficulties downloading a person's mobile phone data?---No, it wasn't my place to do that type of work, it was - - -

No, but their - did they ever have any problems downloading - - -?---Not once I got them the equipment that they needed to complete the task.

So I just want - I am not sure if we are confused by double negatives and negative questions. When you were investigating similar matters and you had the assistance of the appropriate computer experts in the police, were they able to use a system like Cellebrite - if not Cellebrite, that was able to download data from a person's handset?---Yes, but I don't think they had the capability to crack a code.

Yes, but once the code was cracked - once you'd got them - the four digits and you could open it?---Then it's game over, yes. You could copy.

So the Northern Territory did have the capacity to analyse Constable Rolfe's telephone as soon as you got the pin number?---Yes. The AFP would have had to have returned the phone and they could have done that themselves but they didn't have Cellebrite - - -

They didn't?---Have Cellebrite, they had - - -

Yes, but they had a comparable system?---yes.

So once the Cellebrite was obtained - the Cellebrite system was utilised what do you understand happened to analyse the data?---The data was provided to the criminal Investigation team. We have access to that data in the Coronial Investigation team and I recall looking at part of that information when it was drawn to my attention.

So are you able to shed any light on how it is that messages were selected to be provided to the prosecutors as part of their endeavour to adduce tendency evidence?---No, not at all. I can't help you. I was gone within a week or two of that information coming and the volume of information of course was massive.

That is all I wanted to ask. Thank you.

THE CORONER: Mr O'Bryan?

XXN BY MR O'BRYAN:

MR O'BRYAN: Mr Pollock, my name is Conor O'Bryan, I am appearing for the Parumpurru. You said earlier to counsel assisting that in your Coronial memorandum you would rarely make recommendations unless it was an issue you felt strongly about. Do you recall that?---Yes.

I won't take you to it but you can take it from me that in your first Coronial memorandum you make the recommendation that the Northern Territory police put in place an early intervention system to assist in identifying and correcting in appropriate workplace behaviour?---That was something I was floating, yes.

And do we take it from your answer to counsel assisting that was something that you felt strongly about?---Yes, it was a project of mine many years before, as part of my superintendent development program, yes.

And in your statement that you made on 3 August this year, it is a theme that is repeated in that statement, do you recall that?---Well, I recall making the statement and including it but not so much repeating it.

Do you recall discussing the (inaudible) pro system?---IAPro?

IAPro?---IAPro, yes.

Do you recall discussing the IAPro system in that statement?---Yes, I think I made mention of that, yes.

And what we do - and this is at par 102 of 7-111 of A, you mention that that's as system like licensed by the Northern Territory Police Force that has the capacity to enable the Northern Territory Police Force to identify concerning behaviour but it has not been implemented as an early intervention tool?---That's correct, well not to my knowledge. Maybe since, perhaps.

(Inaudible) I understand. Can I suggest that the inappropriate workplace behaviour you were concerned about would include racism of police officers?---Absolutely, yes.

It would include a tendency to be excessively aggressive?---Correct.

Would it include deriving amusement from the application of force to civilians? ---Yes.

And we take it from your contemplated recommendation about the importance of an early intervention system that you consider it would be incumbent on the Northern Territory Police Force to identify those behaviours and intervene at an early stage? ---Yes.

You would be aware of evidence before the Coroner that prior to the events of 9 November 2019, that Constable Rolfe had been identified as having an above average aggression score in psychological testing at the time of his entry into the

Northern Territory Police Force. Were you aware of that?---I am now, as a result of the investigation, yes.

Yes. And you are aware now that prior to the events of 9 November 2019 there had been at least five incidents identified by Senior Sergeant Barram of excessive use of force?---Yes, I read through the 43 or so use of force incidents that he was involved in.

There were 46 of them (inaudible)?---46.

Senior Sergeant Barram had identified five at the time of his statement in evidence before this court it got up to about seven incidents that he considered excessive, are you aware of that?---Yes.

And he - the threshold for excessive that Senior Sergeant Barram was using was that he considered those incidents prosecutable? Were you aware of that?---Yes.

You would also be aware of the evidence before this court that prior to the events of 9 November 2019 Constable Rolfe had sent and received numerous racist text messages on his phone?---Yes.

He had sent video recordings of his own use of force against Aboriginal persons to members of his family, in jest?---Yes.

He possessed video recordings on his phone of other applications of force and while those videos were being recorded either Constable Rolfe or persons taking those recordings were laughing about the application use of force, you're aware of that? ---Yes.

I would suggest to you that each of these matters is a clear warning sign that Constable Rolfe was engaging in inappropriate behaviours and not fit to be a police officer in the Northern Territory Police Force?---An absolute red flag.

And I would suggest to you that it is an institutional failure of the Northern Territory Police Force to have not identified those red flags earlier?---It's very disappointing, yes.

They are the questions, thank you, your Honour.

THE CORONER: Yes, Mr Merenda?

XXN BY MR MERENDA:

MR MERENDA: Thank you, your Honour.

Mr Pollock, my name is Mr Merenda, I act for Constable Rolfe. I want to start by just focussing on the answer you gave a little while ago to Mr Boulten in response to a question and qualifying that the suggestion about bias and you said there was bias

against Mr Rolfe at the criminal investigation of Mr Rolfe? Can you just explain in your own words and in as much detail as you can, what you actually mean by that and how that bias manifested itself (inaudible)?---Well, unfortunately, the early arrest of Mr Rolfe basically set the clock running in terms of a file having to be submitted to the defence. There was a period of x amount of months where the Criminal Investigation team had to compile that brief and provide it to the defence so they were constrained by that set period, when they had to provide that file, without choice. So in gathering the evidence from the experts, it was my view, after assessing what had been provided, that not all materials had been given to those experts, or was not available to those experts, at the time when their statements were required to be submitted. So in other words, they were given information, but not all information. And some of that information that they hadn't been given, was critically important, in my view, to the assessment of whether Constable Rolfe's deadly use of force was appropriate or inappropriate.

In your – in the Proctor Report I should say, there are references made to confirmation bias and that's related to, in particular, Sergeant Barram. Is that a view or a sentiment that you share with Commander Proctor?---Yes.

Can you explain, from your perspective, how that (inaudible)?---Well it goes in part to what I was raising in other reports, around the training that I think Mr Barram assumed Constable Rolfe had received. And my investigations probably showed otherwise. That he may have not received that training. That there was no definitive proof that he ever did. And Mr Barram relied heavily in his report on the fact that Constable Rolfe had received that training.

Now when you say "that training", is that in reference to training in relation to DIAMO plus P?---The one that we can't mention, yes, because we've removed the acronym.

Yes. So in relation to that, as I understood it, your enquiries revealed that that was no longer an active training technique, or if it was, it was only in relation to a particular type of training. Did you have any confirmation as to whether - - - ?---I had sent my investigation team over to the college, to determine whether in fact that training was delivered. And the answer they brought back to me, was that no it is no longer taught.

So the – the investigative expert opinion, that had been provided by Sergeant Barram in that regard - - -

DR DWYER: Nobody can hear you Frank.

MR O'BRYAN: Sorry, because I'm standing back from the microphone, your Honour, I think it's not catching me. So I have to be mindful of microphones if it looks like I'm standing oddly, this is why.

So just going back to that, Sergeant Barram had given an opinion in relation to why he considered Constable Rolfe's use of force was excessive. And one of the

critical aspects of his opinion was his reliance on a training technique, which, in your opinion, wasn't being taught at the time Constable Rolfe went through college?---That's the information I was given.

And by reference to the materials, and we don't have time to go over all the materials. But it seems to be the case that this is something you were raising as a matter of real concern, in particular, with Assistant Commissioner Anticich?---Well I was raising it because the General Order, the Major Crime General Order, or – says, and I think it's par 88, that bias must be reported through the senior investigating officer to the JMC Chair. In other words, it's mandatory. If you suspect there's bias, you must report it.

Is it your view that your concerns were taken seriously?---Yes I believe so.

In terms of the way in which those discussions were had, you prepared a memorandum, I believe in October 2020, I think, identifying a number of issues in relation to Sergeant Barram's evidence?---Yes it was a bit deeper than that.

Some of the issues raised were firstly (inaudible) DIAMO plus P, there was also a question about training in relation to s 208 (inaudible)?---Yes, and their correlation with the ANZPPA Use of Force Principles.

After that occurred, there was a discussion, or a meeting should I say, under the Operation Charwell banner with yourself and Commander Proctor, and Assistant Commissioner Anticich, which was the subject of (inaudible)?---If that's number four you're referring to?

Correct?---Yes.

Now in the course of that discussion, is it fair to say that it was heated, sort of back and forth debate about the role of the Coronial investigation team throughout the trial process?---It was a robust discussion.

When you say "robust" can you give some emphasis to that?---I think – yeah, there were some strongly viewed points of view I guess that Mr Proctor, I guess, was challenged by the fact that he was being asked to suspend his investigation. And he didn't like it.

In terms of that, there's a notation in relation to some discussions that occurred between Commissioner Anticich and Commander Proctor. I'm just going to read some aspects of notations (inaudible) Mr Anticich reiterated that he is not saying the Coronial investigation is not to continue, but it is suspended. CP (inaudible) - - - ?--- Commander Proctor.

- - - "Questioned whether this means all evidence will not be provided to the court, but rather information for prosecution." Was that something that you were concerned about, at that point in time, given what was occurring as between the Coronial investigation and the criminal investigation team?---Absolutely.

What gave rise to those concerns?---Well if the issues that we were raised were legitimate, in that they could have impacted the prosecution case, or the defence, assisted the defence, whatever, if they were, I guess the word buried, until after the trial, that may well have an even worse repercussions post trial, and may have caused a retrial.

I assume that's particularly concerning in the context where taking this hypothetical example, Zachary Rolfe had have been convicted, and that information had have come out afterwards on appeal, that would have been incredibly terrible for the organisation - - - ?---Worse, worse than anything.

Later on, it appears that Commander Proctor noted that Mr Anticich was putting the organisation at risk, and Mr Anticich noted he accepts this risk. Commander Proctor noted he does not. Again, I take it from you, and your approach to this whole situation in relation to Barram, that wasn't a risk you were willing to take?---I was going to document my concerns. So if it came out at a later time that we'd attempted to hide that information, well here's my evidence that I didn't walk past what I saw.

Now it's been suggested by Mr Anticich that, to the extent that there were criticisms to be made of Sergeant Barram's evidence, that that really was not something that the Coronial investigation team should be (inaudible) until after the Coronial process had run its course. In light of what you've just said, would you disagree with that proposition?---Well yeah, because I wasn't critical of Barram's opinion. I guess it was the material that was referenced, and the training issues that I'd been tasked to look into by the Deputy Coroner that concerned me the most.

And I suppose, in that context, when you were looking at his opinion, you were looking at the assumptions that he had ultimately made for the purposes of reaching his final conclusions?---I was looking at – well at the training materials, and statements that all police are trained in DIAMO plus P, when clearly they weren't. I've never heard of it prior to reading his statement.

And that was obviously an assumption that he leaned upon that this is an identifying in what training context Mr Rolfe was seeming – would seemingly have been operating (inaudible), but he was drawing a conclusion about the training that Mr Rolfe would have received. And (inaudible) of his force?---Yes, and we'd looked at that training, the same material as what Mr Barram had looked at, as – as part of obviously our brief.

(Inaudible) enquiries from the college?---Well it was worse. Because we couldn't even find – identify the person who was scheduled to deliver the training.

Right?---The person on the schedule to deliver the training had booked off sick. And the records had never been updated, which is a breach of the registered training organisation procedures. And at the end of the day, we could not even identify anyone who delivered the training and – again, this is at an early stage where the investigations are ongoing. We could not identify the person who actually delivered

the use of force training module. And the reason we were desperate to do that was to see or seek confirmation that this is what they were taught.

Is that why you raised concerns about whether some aspects of Sergeant Barram's report were actually just untrue?---Well, I was seeking obviously confirmation. If I was going to feed information to the Coroner, that I wanted it to be factually correct and I couldn't obviously corroborate what Mr Barram had written.

To what extent did the criminal investigation team adhere with your attempts to try and confirm all those issues?---Well, they never interfered.

All right. So, what was it that got in the way of you being able to confirm those matters?---Mr Barram was a witness in a criminal proceeding, and the logical next step would have been to speak with Mr Barram and ask him, where did you find this material? How do you know it was delivered because we can't find that material. But in respecting the criminal prosecution case, we obviously didn't want to be seen or perceived to be interfering with witnesses, in particular, Mr Barram.

Now, in relation to record-keeping, I note that in your report dated 20 July 2022, you adopted the opinion in relation to (inaudible) firstly, that those as a matter of practice, those types of meetings would always be (inaudible) recorded?---Always.

Now, when you say they were "recorded", do you mean recorded in writing or do you mean literally recorded as a matter of practice?---It is actually a proforma for critical decisions and that should be uploaded into PROMIS.

Right?---Under the critical decisions.

So, that's a written document, as opposed to – I was trying to understand by reference to "record", whether before (inaudible) which means an audio recording of the decisions they made, or just a form (inaudible)?---Well, there is a form, but again, it's – as long as it's recorded, I guess, is most important, electronically or otherwise.

In relation to JMC meetings, was it your assumption that it was the practice to audio-record those meetings?---That had been the practice that I was familiar with prior to Operation Charwell.

And in terms of that practice, over how many years' experience was it your understanding that that was the practice within the Northern Territory Police Force?---It was one that evolved, I guess. But it just makes sense, given the critical decisions that are made at the JMC level to have them audio-recorded.

Now, you attempted to obtain those recordings from the investigation team?---No, I think I tasked Superintendent Morgan to get them off the executive assistants.

So, that was something you sought assistance from Superintendent Morgan at the time?---Yeah, it was one of the tasks that I asked, could he go and get the actual recordings for me.

And what was the outcome of that?---They couldn't find the recordings.

So, you didn't receive any recordings at all?---No.

Having seen Mr Anticich's statement - - -?---Yes.

- - - do you see in his statement, I believe it's his September statement and it make reference to the JMC, there were four (inaudible) which had intent, but that others were (inaudible)?---Perhaps.

Is that explanation ever given in the course of your attempts to try and locate those missing recordings?---No. No, that obviously came in after I was not – well, based on the information that I was given, I was of the belief that there were no recordings kept at all.

Right, so you weren't told (inaudible)?---No.

No. I just wanted to deal very briefly with some of these meetings that you had with Mr Anticich in the lead up to (inaudible). Now, I just want to deal with the 16 April meeting. So, I understand from your statement there are a number of topics, but two of those were concerned with, first of all, what's described in your statement as "tainted evidence" in reference to Sergeant Barram in that regard. And another is you wrote (inaudible) six statements. Now, what was your impression of the reception that you received from Mr Anticich in relation to you flagging issues relating to Barram's evidence and the obtaining of consecutive statements?---He became agitated during the meeting. I think I was bringing in the problem not the solution.

How long did that meeting go for?---Probably about 15 minutes.

And to the extent that you raised issues in relation to Sergeant Barram, what was his response to that?---I think, as I put in my statement, he didn't really make, from what I can recall, comments about what those issues are as I went through them, but rather, spoke at the end saying, as he ushered me out of the office, have you spoken to Kirk about this.

Now, we know by reference to some of the documents that are annexed to your statement, in particular, the email from Lee Morgan on 27 May 2017 (sic), but ultimately, there was a change of command that was 7 May 2020, sorry. There was a change of the guard effectively after you raised those issues. And in particular, we know that other persons in between you and Assistant Commissioner Anticich. And in that regard, wasn't your impression that you regarded the way that these events unfolded in time over the period from (inaudible) 2020 that you raising issues in relation to Barram was a protagonist area for the changes (inaudible) structure of the Coronial investigation team?---No, I would have to be guessing.

All right.

Those are my questions, your Honour.

THE CORONER: Thank you.

MR BOULTEN: I promised you a reference.

THE CORONER: Yes, you did, Mr Boulten.

MR BOULTEN: So, it's 1-006 page 43.

THE CORONER: It's for me, but it's also so other people can follow.

MR BOULTEN: Yes, of course.

MS OZOLINS: Your Honour - - -

THE CORONER: Yes.

MS OZOLINS: - - - I just have two matters I would like to raise with Mr Pollock.

THE CORONER: Ms Ozolins.

XXN BY MS OZOLINS:

MS OZOLINS: Just picking – I'm sorry, as you know, my name is Sally Ozolins and I'm appearing for the Police Association. Just picking up on something that Mr Morenda just raised, I think he called it the "change in the guard", that is as reflected in your statements, you were taken off Operation Charwell and you were put into, I think an incident-controlled position for COVID-19 management?---Correct, fulltime, yes.

Yes. And then, as I understand from discussions we've had, you understood that you were going to be in that position and you planned your retirement after a period of time. Is that correct?---12 months, yes.

And what happened after that when you were in the incident controller position?---I continued as best I could to progress the draft Coronial report. You know, through loyalty, I guess, to Commander Proctor. I felt obligated to utilise the 12 months or so that I had been doing the job, the information that I had, to advance as much information as I could through a hastily compiled report and yes, strong language is probably used, emotive language that I usually go back afterwards and amend and take it out. But up until I think early January, I continued on with that until the COVID team transferred it over to the Peter McAulay Centre and it was getting too busy to do both.

Sure. Now, sometime after that, you moved out of the incident controller position and given notice that you were going to be reallocated as a duty superintendent?--- Yes, at the beginning of March, there was a meeting I had with the commissioner

and the two deputies. It's like a performance development meeting and I raised the fact with them that I intended to retire in December of that year, so I didn't want any further development, thank you very much. I just wanted to be left in the position, if possible, until the end of the year. I was given an assurance by the commissioner that would happen. And two weeks later, I think around mid-March, he rang me and said that he was going to transfer me to the Territory duties superintendent position.

And what did you do as a result of that?---Retired.

I think the comment that you made to me in relation to that was that you felt completely unsupported by the organisation. Is that still how you feel now?---I'm getting better each day, yeah.

Did you, in that period, during your time working on the Coronial and immediately after, would you say that your health was affected by the work environment?---My health was declining.

And has that improved in retirement?---This case hasn't (inaudible).

And just one final question on that, what if any, contact or support from the organisation did you receive after your retirement?---None, they turned their back on me.

And is that something that still affects you now?---Definitely.

Thank you.

I have nothing further, your Honour.

A PERSON UNKNOWN: I have no questions, your Honour.

MR FRECKELTON: Just two, (inaudible).

THE CORONER: Yes.

XXN BY MR CASSELDON:

MR CASSELDON: Mr Pollock, in response to a question from Mr Boulten of Senior Counsel, you refer to a de-confliction process. You recall giving a response to that?--Yes I do.

In relation to that parallel criminal investigation and the Coronial investigation, was there put in place any de-confliction process to manage any potential conflict between those two investigations?---In my view, none what so ever.

And in the ideal world, how would a de-confliction process operate in practise, to resolve any perceived conflict between - - - ?---Well it - - -

- - - parallel investigations?---Simply put, just having a meeting between the parties who are at odds with each other, before the JMC Chair, and common sense resolutions as a result. You know, a task or you know, when you're in dispute, one of you must be right, for example, when you're looking at facts, as Mr Boe raised and – in relation to Leanne Oldfield, it should have been resolved on the spot pretty much, but it wasn't.

You were taken by Mr Merenda to a memorandum that you wrote dated 20 October 2020, were you outlined some concerns you had in relation to the expert opinion of Sergeant Barram. Do you remember that memorandum?---Yes, I do.

At the time that was written, was there any further investigative steps that needed to be undertaken in relation to that matter?---Yes, the plan between myself and Commander Proctor, I guess, we were hoping, post-trial, to go back to witnesses who we could then access, such as Mr Barram, and cover off on the information gaps that we had identified, and provide a better standard, quality investigation through to the Coroner. But neither of us survived, I guess. We left it with Mr Morgan.

DR DWYER: Your Honour, I have about 15 minutes, if you (inaudible) for me to proceed?

THE CORONER: Sure. Yes.

REXN BY DR DWYER:

DR DWYER: Mr Pollock, are you right, or do you need a break at this point in time?---No, I'll survive.

Okay. Can I just ask you firstly about some – just some follow up, very briefly, about the issue of DIAMO-P, D-I-A-M-O plus P. Are you aware that on 21 – of August 2020, Mr Barram completed an additional statement, where he clarified the use of that term. He says in his statement –

It's in the brief of evidence, your Honour, at 10-8.

He says in this statement, "I've been asked by Detective Acting Superintendent Kirk Pennuto, to expand upon my use of of the DIAMO plus P model, to analyse the police involved shooting that occurred in Yuendumu." And he goes on, I'll just summarise, to say, that that acronym was removed to reduce the number of acronyms that recruit constables were required to learn and reproduce. However the wording of the model remains as an example to be taught. He points out the page of the Facilitator Guide that it's on, and he says "While it doesn't have the exact label DIAMO plus P in its current format, the meaning and structure of the model remains intact, and is currently to all police as an example model." And he goes on to explain what that means, D-I-A-M-O plus P, and the way in which its taught now. You're aware that that statement was completed by Mr Barram?---Yes.

In response to a request from Mr Pennuto?---To clarify what was contained within the Use of Force Guideline where it was notated that that acronym or DIAMO plus P had been removed from the training content.

And that was ultimately served on the defence, you're aware of that?---I imagine so.

And you're aware that your draft reports, if I can call them that, or your drafts, were served on the defence, prior to trial?---Yes.

And that, are you aware, that Mr Barram was cross-examined at trial, in front of the jury, by Mr Edwardson, on this issue, and the relevance of DIAMO P?---I didn't follow the trial.

All right. Would you accept from me - - - ?---Yes.

- - - that that's what occurred?---Yes, of course.

So that in reality, the information that you bring to light in this inquest was known to the defence, prior to the trial?---Yes.

Just in relation to one other aspect of the prosecution of Constable Rolfe that you were asked about, before I move back to the – just focus on the inquest issues. You gave some evidence that in relation to an injury suffered by Constable Eberl, that should have been the subject of attention obviously, so that it could be considered in the context of the use of force incident?---Yes, of course.

You – sorry?---Yes, of course, I - - -

And you're aware that Constable Eberl was not aware that he had a scratch on him, until the day after the incident?---Yeah I don't know when he – because he hadn't been asked questions about the injury when it was inflicted, or when he first came across this - - -

Okay - - - ?---Scratch.

- - - but are you aware now that he was asked questions about the injury once he became aware that he had a scratch on him?---At trial?

Prior to trial. That photographs were taken of the injury - - - ?---He provided - - -

- - - and disclosed to the defence?---He provided three statements, but he wasn't questioned in relation to the detail on how, when, in – during those interviews. The whole in his shirt, for example, the – it was all overlooked. And then my information was that the Association had stepped in, because they were complaining about members being interviewed multiple times, and the stress that was causing, and by that time, Mr Eberl had provided three statements, and obviously the criminal investigation team didn't go back for a fourth.

But you're aware, aren't you, that a photograph was taken of the scratch on Mr Eberl - - - ?---Yes.

- - - when it was current?---Yes.

So it must have been taken within a period of time that allowed for the scratch to be recorded?---Yes.

And that the – that photograph was disclosed to the defence?---Yes.

And then Mr Eberl was available to be asked questions at the trial, and the committal, in relation to the scratch that he sustained?---I imagine that would be the case, yes.

For the benefit of my learned friends, that's the trial, 2 September 2000 and – or the – the committal, for example, at page 153, and it's also in the trial.

In relation to the issue of Mr Rolfe, or Constable Rolfe, I should say, being interviewed. Kumanjaya passed away on 9 November. Constable Rolfe came into Alice Springs sometime shortly before midnight that night. He then went to the hospital for treatment, for the wound he received on his shoulder. That's all – well I withdraw that. In relation to him receiving treatment in hospital, that's appropriate of course?---Of course, yes.

And then by the – if you can accept from me the evidence suggests that by the afternoon of 10 November, as soon as the body-worn video was viewed, he was – consideration was being given to him being a suspect in a murder trial?---There was obviously concern, yes.

So in terms of any version of events being given by Constable Rolfe, are you saying that that should have happened between say 1.30 – 2 am, when he got back from the hospital, and the afternoon of 10 November?---Well I can only answer the fact that Scott Pollock (inaudible) all over him, and in attempting to interview him at the earliest available opportunity. And if I had seen that video and formed a belief, and he's turning up at my police station for an interview thereafter, again, I would have been welcoming him into my interview room, under caution.

Right. So that was my next question. If you'd viewed him as a suspect, you're an experienced investigator, you understand you need to caution a suspect before they give an interview?---Yeah, otherwise you're wasting your time, yes.

Because they're not admissible in – it's likely not admissible - - - ?---Correct.

- - - in a criminal context? Are you aware that Constable Rolfe was invited to give a voluntary account from around 11 November?---On the Tuesday I think, before we flew to Darwin.

I think early indication – well, I might be wrong about this. I believe that an early indication is – an early request came on the 11th. So Sunday was the 10th?---Yes.

On Monday the 11th?---I'm aware that he went to the police station.

Conversations were had between the investigators, and his legal team, to enquire as to whether or not he would like to give a voluntary interview?---I believe that was while he was there.

You say, he should have been given an interview at that time, or immediately brought in, but obviously subject to a caution?---Yeah, he's a suspect in a murder I guess by that time.

Are you aware that Constable Rolfe provided a version of events in a notebook?---Yes.

Have you read that version of events?---Yes, once a long time ago.

That's a version of events that is available to - in an inquest, correct?---Yes. I'm not sure whether it was available at trial.

Do you recall that included within that notebook is a specific reference that Constable Rolfe made to the *Coroners Act* and that that was the reason why he was providing that statement?---Yes.

But within that he sets out a version of events, do you agree?---He set what, sorry?

He sets you a version of events?---He does, yes.

And it would be that if he had done that under interview it would be open to compare that version of events with a version of events given at trial, correct?---Yes.

So that ultimately it's of great assistance to get a version as soon as possible, it might be inculpatory, it might be exculpatory, you just don't know until you get it?---That's right.

Before I move on to that issue do you accept that in giving consideration on the Sunday to when and how Constable Rolfe should be interviewed, police officers were acting in good faith in trying to balance his rights to make sure that he was cautioned?---Good faith goes out the door when you are trying to acquire critical evidence.

Do you mean by that, Mr Pollock, that you put aside somebody's rights to remain silent (inaudible) - - -?---No, this is before the viewing of the body-worn, in that period between morning and 3:00 in the afternoon (inaudible). I mean if he is coming to the police station or wants to provide a version of events, I would have been only to happy to obtain it, but it didn't occur.

You are looking back on this, looking for room for improvements and lessons to be learned from an investigation of this incident, correct?---Yes.

The lesson to be learned here, you tell her Honour, is that if a similar tragedy should occur - let's hope it doesn't - that a police officer shoots a member of the public and they pass away, a version of events should be taken at the earliest opportunity without giving consideration to whether they are a suspect or not?---Well, I guess that's for the designated officer-in-charge to make that determination decision. As you know, there's a lot of things you've got to take into account before you make that decision and this case in particular was quite unique in many ways.

And that is really what I am suggesting to you, Mr Pollock, do you appreciate that investigators face a pretty difficult task here in trying to determine exactly when to interview Constable Rolfe and on what basis? It was unique and difficult?---Yes. I think by the time they made up their mind to interview him and opportunity was lost, but yes, it had to be under caution by that time.

In relation to the text messages, Mr Boulten asked you some questions about when they became available. We have within the brief of evidence - I will just see if I can turn it up for you, a statement - just one moment, your Honour - from a Mr Pham and that is in folio 3, 160. I will just remind you, William Pham is from the AFP, he provides a statutory declaration. He indicates that he is a digital forensic examiner for the AFP and his duties are to provide support to the AFP and he says, "On 31 September 2020 at about 4:16 he commenced an examination of Constable Rolfe's phone. He explained exactly what he does to commence that examination. He attempts an extraction and is unable to do so at that time so on the 1 October he tries again and then the extraction is ultimately completed. He then provides that to the police. So we are still at around 19 October 2020, a member of the AFT is able to assist the Northern Territory Police with a download of Constable Rolfe's phone. Is that your understanding?---Yes. I wasn't particularly closely involved in that transaction I guess, you know, my member passed the code to a member of Mr Pennuto's team and they contact the AFP and that's how it sort of unfolded.

And so that's an example of appropriate cooperation between the Australian Federal police and the Northern Territory Police with respect to assisting with technical expertise?---Yes. An example of cooperation between the Coronial and the criminal investigation teams.

And that information would have been available to the criminal and Coronial team by the end of 2020?---Yes. Once again i was for the criminal investigation team to review it - if I say "first" as a priority it was there, obviously evidence, till look at.

Sure. We have then a document with the - in excess, I think, of 15,000 pages in the brief of evidence. I don't need to take it to you but it contains downloads from Constable Rolfe's phone. As far as you're aware there was nothing to stop the criminal investigation team - and the lawyers at trial - in going through that and putting before the court those matters that they believed to be relevant?---Correct.

In relation to the text messages - I am not going to take you all to them and I think Mr O'Brien took you to some, there's reference to towelling up locals and racist words that are used by more junior officers including Constable Rolfe. But one of the things that has been revealed in this inquest is that at least two sergeants, Sergeant Barram and Sergeant Kirkby, used racist language.

THE CORONER: Sorry, I think you used the wrong name.

DR DWYER: I beg your pardon - I am so sorry, I withdraw that. Obviously I withdraw that. Sergeant Bauwens from the IRT and Sergeant Kirkby participated in text exchange using racist language. Do you agree, given your years of experience in the Northern Territory Police that that role of sergeant is a very important one in terms of mentoring younger officers?---Yes, I guess that's the reason you get promoted to that rank, is to mentor and develop people beneath you.

So it's of particular concern isn't it, in terms of a culture, at least within parts of Alice Springs police at that time, that sergeants were using that racist language when they are supposed to be setting the standard?---It's a concern that they have reached that level and still maintain, you know, those behaviours

And a concern in terms of setting a cultural standard for the office at Alice Springs at that time?---It's terrible, yes.

Do you have any - and before I move on from that, one exchange involving Sergeant Kirkby with Constable Rolfe involved laughing at Constable Rolfe's suggestion about the misuse of body-worn video when Constable Rolfe suggests that he is happy to turn the video around and act up for the video?---(No audible response).

Do you agree that in terms of a disciplinary process and trying to set standards, that's impossible if you have a sergeant not adhering to those standards themselves?---That's right.

How do you suggest that sergeants become involved - I withdraw that. Does this suggest the need to remind sergeants of the important role that they play in mentoring and setting standards?---Well, you shouldn't have to, I guess, and I'd like to say that - and hope - that they are the only two sergeants in this organisation that engaged in that type of behaviour.

That behaviour has been revealed because of the text messages that have been revealed. Do you think that it's a timely reminder of the need to be vigilant about pockets of racism within the Northern Territory Police?---Yes, I'd like to call it "To Sir with Love" moment. You see these behaviours coming back from time to time and just when you thought you'd got on top of it these type of things unfold.

So it needs to be an ongoing process and ongoing vigilance?---In relation not only obviously the racist comments and that but behaviours in general for members. If

they want to be a police officer they have got to know what the standard is and be reminded of that, yes.

And where it is revealed - well, I will go back a step. You agree that in terms of engaging in racist exchanges with younger officers, that's a fundamental lack of leadership demonstrated by those sergeants?---Yes, it's a serious question of discipline.

And those two sergeants should have been gone – perhaps should have been subjected to a disciplinary process once that was revealed?---Absolutely, yes.

And you would expect there to be very significant consequences for the use – or for that breach of discipline?---I've had examples working in Professional Standards Command myself, identified racist behaviour, and yes, there were immediate penalties dispensed as a result.

And it might be – there might be all sorts of reasons why, I'm not suggesting that it's ever justified, but there might be all sorts of reasons why that language is being – racist language is being used, but you want to get to the bottom of it don't you, and see how far, if he has infected others within the station?---Yeah well naturally, I take it back to my role as a Coronial investigator, and my knowledge around the Royal Aboriginal and the Death in Custody recommendations. There's an actual recommendation that police officers don't use racist or offensive language. And if so, it's to be treated as a serious breach of discipline. And the Northern Territory Government, and the Northern Territory Police, have adopted those recommendations. So I guess it's set in stone in my view, that it's a serious breach of discipline.

I just want to – last couple of questions, focus again on your role as a Coronial investigator. Within your report, I think it's the last draft, 1-6, you deal with some of the issues relating to the recruitment of the IRT, ICENCIRE Training, and the entry into the house at 511 – 511. In relation to the ICENCIRE Training, we've seen a photograph of the inside of Constable Rolfe's notebook, by way of example, where ICENCIRE is typed and recorded as a message for all officers to be reminded of in their notebooks. You – it's drilled into officers within the Northern Territory Police Force isn't it, that training?---I'd be surprised if any officer would deny not knowing about ICENCIR.

And it's relevant to all sorts of different experiences with – or confrontations within the Northern Territory Police Force, not just a siege environment?---Well I guess that's where it's set, and uses it as an example, as a siege situation. But I do agree, I think with Mr Barram's comments, that yes, it can be used most situations involving arrests.

And what you say at page 35, of this draft, is this, after setting out the ICENCIRE acronym.

“All IRT team members who attended Yuendumu, were trained in the ICENCIRE principle. These principles should have been considered and applied, when they set out to locate Kumanjaya Walker. The approach to House 511, as evidenced by the 3D re-enactment of events, was a poor example of cordon and containment. The radio communication between the IRT members at the time when Kumanjaya was suspected of being the male inside the house, was deficient.”

Do you stand by those comments?---Yes.

You go on to note:

“When Kumanjaya’s family members were present, there was an ideal opportunity to properly call in all members to cordon the house and negotiate with a then unknown male from the premises.”

You stand by this?---Yes.

You then go on to note “By entering the premises in haste, both Constables Eberl and Rolfe place themselves in a situation best described as officer created jeopardy”
- - - That’s right.

You stand by this?---Yes.

What do you understand to be meant by “Officer created jeopardy”?---They’ve put themselves in a position where they could be exposed to danger.

And in fact, you reference a foot note, I note here, at 45, “As defined as situations where officers needlessly put themselves in danger, committing an unforced tactical error, that makes them vulnerable, and thus in a position where they must use deadly force to protect themselves”?---And that’s what happened.

And do you think it’s important then for officers involved to – for the Coroner to understand whether or not the officers involved have an insight into that?---It is important they have an insight into - - -

So I’ll take – I’ll ask it directly. Constable Rolfe was involved in that, what you described as, and you express your opinion as “Officer induced jeopardy”?---Yes.

If you’re trying to understand what his motivations are, and whether he learnt from it, you’d ask him, wouldn’t you, to reflect on that?---Yes.

And whether he appreciates the significance then, of mistakes he made?---Was that consistent with his training, yes.

And you go on to say, “This action, in your view, was not consistent with IRT training, or the ICENCIRE model. A planned response, with suitably experienced team

leader in place, would have most likely avoided death of Kumanjaya from occurring"?-
--Yes, I'm strong believe that a team leader would have made a difference.

And you stand by the other comment that I just read to you?---Yes.

Finally, you were aware, weren't you that there was a plan for arrest of Kumanjaya in the morning at 5 am?---Yes.

And that plan was developed by Sergeant Frost with an oversight from Superintendent Nobbs?---Yes.

You commented on a previous – you made a number of comments with respect to team members and being praiseworthy of members of a team that you've worked with?---Yes.

Detective Kingston was one of the ones you worked with. Have you had the opportunity to work with Detective Sergeant Frost?---Yes, for many years.

In what circumstances?---In major crime. She – when I say the balloon went up, she (inaudible) reported, we'd all adopt – embrace our positions. She would be our systems manager, in other words, controlling all the information entering into PROMIS and she was magnificent.

Did you form – I think you've just answered my question, but did you form a view as to whether or not she was a person of integrity?---Of the utmost.

And did you form a view with respect to her competence?---Brilliant.

Can you tell us why you formed that view?---Her work as a systems manager dealing with copious amounts of information, you know, reviewing information, sending out tasks in a pressure cooker situation, she was my go-to person.

And what about your – are you able to express a view in relation to her commitment to her work ethic?---Dedicated. Absolutely dedicated.

And finally, with respect to her ability to work within a team and respect other members of a team?---She's certainly proven as part of my team that she was almost invaluable.

Thank you, your Honour. Nothing further.

WITNESS WITHDREW

THE CORONER: Sorry to interrupt your retirement and have these matters affecting you in the way that they have at the end of your career. I hope that you are able to draw some comfort from the processes of this inquest and that you are able to continue your retirement and enjoy your retirement fully after your years of service to the community and to the NT Police?---Thank you, your Honour, it's appreciated.

DR DWYER: Your Honour, there may or may not be one further witness this afternoon. Might we just take a very short break?

THE CORONER: Sure, we'll take the afternoon adjournment.

ADJOURNED

RESUMED

THE CORONER: Take a seat. Yes, Dr Dwyer?

DR DWYER: Your Honour, I am informed that Superintendent (inaudible) is not required, so he won't be called this afternoon. And I'm grateful to my learned friend for that indication. And I note this is a very rare early mark for this court, at five to 4:00.

THE CORONER: Excellent.

And we're adjourning now until Friday 25 November at 9:30 am.

DR DWYER: Thank you, your Honour.

THE CORONER: All right, we'll adjourn.

ADJOURNED