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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 2 MARCH 2023

(Continued from 01/03/2023)

Transcribed by:
EPIQ

DR DWYER: Your Honour, can I just place on the record, particularly for those listening to the livestream and following on from the inquest, the first witness was to be Dr Beer. I'm told by my learned friend, Mr Officer, that she is no longer required for examination, oral examination. So, she won't be called in the inquest. We will be starting with Officer Nankivell and - - -

THE CORONER: Thank you.

DR DWYER: - - - following Officer Nankivell, he's being interposed because his counsel, Mr Gnech is here from Queensland to assist him.

THE CORONER: Yes.

DR DWYER: And then we'll return to Deputy Commissioner Smalpage.

THE CORONER: Thank you.

Yes, Mr Coleridge?

MR COLERIDGE: Your Honour, just before I call Sergeant Nankivell, I foreshadow that there is likely to be a s 38 application at the outset of his evidence. I think myself and Mr Gnech are in agreement that it's appropriate that one be sought and thus, we need to provide you with reasons for that now once the witness is called.

THE CORONER: I think we'll call the witness and deal with it in the usual way. So, Mr Gnech, you're here for Sergeant Nankivell.

MR GNECH: Yes, thank you. For the record, my name is Gnech, spelt G-N-E-C-H, (inaudible).

THE CORONER: Thank you.

MR GNECH: I sought leave by writing earlier.

THE CORONER: Yes, thank you.

MR GNECH: I call Sergeant Nankivell.

THE CORONER: Yes.

IAN NANKIVELL, affirmed:

THE CORONER: Thanks for coming today.

XN BY MR GNECH:

MR GNECH: Sergeant, would you please state your full name for the record?---My full name is Ian Stewart Nankivell.

And what's your current rank and station?---My current rank is Sergeant of Police and I'm at the Exercise Management Unit at Berrimah.

Your Honour, before I ask any further questions or ask the sergeant to adopt the statement, I note that I'll be asking questions this morning about a text message that was sent to a person who the sergeant believed to be a witness to the events of 9 November 2019. A text message was sent on 10 November 2019. I will be putting various things to the sergeant about the intent of that message and in my respectful submission, there is a real possibility that the sergeant might be incriminating himself. I understand that there's an objection. There is an objection on that basis, your Honour, on the basis that the answer may incriminated my client. And in that regard, it's my submission that a certificate should be issued under s 38 under these circumstances.

THE CORONER: Yes. And he is seeking a certificate before he answers any questions?

MR GNECH: Any questions, yes, thank you, your Honour.

THE CORONER: All right. Yes, I will now grant a s 38 certificate under the *Coroner's Act* and that certificate is now provided?---Yes, thank you.

MR GNECH: Sergeant, you have an iPad in front of you, is that correct?---Yes.

And that's - I apologise if I'm speaking very softly at this point.

THE CORONER: Would you prefer a hard copy or are you okay with the iPad because I've got a hard copy?---I'd probably prefer a hard copy, your Honour.

I will give you my - I'll take the iPad?---Thank you ma'am. Thank you. Yep.

MR GNECH: Thank you, your Honour. For the record, the statement is at volume 7, item 100A. Sergeant Nankivell, would you agree that you have in front of you a statutory declaration dated 14 November 2022?---Yes.

Would you turn to the first page of the statutory declaration at par 4 you indicate that you provided the statement under compulsion?---That's what it says, yes.

Under s 76(d) of the *Police Administration Act*?---Yes.

Now, at the time that you produced the statement you knew that it was a criminal offence to make a false statement?---Yes, of course.

And you were assisted in producing this statement by a legal representative?---Yes.

Who took his time with you?---Yes.

And impressed upon you the importance of being true and correct in all of the evidence you gave in the statutory declaration?---Yes.

And you did take care to ensure that the contents of your statement were true and correct?---Yes.

For example, you took care to ensure that you only said things had or had not occurred when you remembered that they had or had not occurred?---Sorry, can you say that again?

A significant period of time had passed between November 2019 and November 2022, correct?---Yes.

And any normal person would forget details of what was or wasn't said in text messages or on phone calls in November 2019, three years later. Do you agree? ---Yes.

And so when you drafted the statement you took care to make sure that when you said that something had happened or that it definitely hadn't happened, you actually had a memory of that, correct?---The - I have to say "yes" I guess. I've signed the statement - yes.

THE CORONER: You were giving it to the best of your recollection?---From the best of my recollection, your Honour, yes.

MR GNECH: And because you were giving it to the best of your recollection, where there were parts of your evidence that you honestly just couldn't remember, you said that, didn't you?---There was a lot of what I said I couldn't remember.

And it's - - -?---It's - - -

Sorry?---No, you're right. You're right.

Now, you've been a police officer in the Northern Territory for approximately six or seven years, is that right?---At the time, yes.

In 2019 you had?---Yes.

Okay. You became a police officer in 2012 I think?---Yes.

In the Northern Territory?---In the Territory, yes.

But for some decades prior to that you had been a police officer in Victoria, correct? ---That's correct.

And during that time, in or around 1994 you were involved in a fatal police shooting? ---Yes.

And in your statement you talk about some of the things that you learned as a result of that shooting?---Can you direct me to what part of the statement that's in please?

Sure. At par 16 you say that as a result of your experiences in 1994 that you've learned about the acronym IAMO+P?---As an instructor I was, yes.

And you say in par 16, don't you, that one purpose of this acronym is to assist officers and others to evaluate uses of force?---Yes, that's correct.

Uses of force that include fatal applications of force - like shootings?---Yes, and all the others, yes.

Okay. But another thing you learned - perhaps more as a human being and less as a police officer - was that events of these kind are highly traumatising?---I know that from personal experience, yes.

And in fact you say that you saw first-hand the impact that it had upon your police colleague?---Yes.

But also on the deceased's family?---Yes.

Now, during your training with the Northern Territory Police Force - - -

THE CORONER: Probably not limited to that - vicarious trauma as well, which you've been exposed to, no doubt, over the years?---Yes.

But you would be learning a lot more about these days?---Yes, your Honour.

MR GNECH: During your training with the Northern Territory Police Force, you were inducted - or taught about - the acronym DIAMO plus P?---It was a part of the 2015 Sergeant course that I did in the paperwork. I don't recall - what do you say - inducted or whatever it was - I don't recall that. I don't recall it being used.

Now, the acronym was slightly different?---It was.

To DIAMO plus P but in your statement you indicate that it served a similar purpose, which was to assist officers to evaluate when a use of force was justified?---In the statement that's what it says, yes.

Now, your prior experience with Mitchell Hansen - that is prior to 10 November 2019, consisted of a meeting at the Peter McAuley Centre on one occasion, is that correct? ---That's correct.

And that meeting effectively consisted of shaking hands and having a conversation that lasted about 30 seconds?---I was introduced to him but I didn't have a conversation. He was talking to the gentleman I was with.

So in effect you had never had a conversation with Mitchell Hansen prior to the text message you sent him on 10 November 2019?---No, there would've been conversation due to him coming to us at Port Keats about his housing and that sort of thing but not - not from the time I initially met him till then.

Sorry, I missed that last bit?---Not from the time that I met him until the time that he was coming to us at Port Keats.

At par 38 of your statement you say, "To the best of my recollection the only contact that Constable Hansen and I had since that initial meeting at the Peter McAuley Centre and his starting work at Wadeye Police Station, existed at the aforementioned text message I had sent him on 10 November 2019." Do you agree that's what it says?---That's what it says.

Is it possible that someone else was responsible for his induction?---No. That's - the part in the 38 is incorrect, your Honour.

Okay?---I couldn't remember how I'd - where I'd spoken to him or when I'd spoken to him.

But despite the fact that as at the date of this statement, to the best of your recollection you had not spoken to Constable Hansen in the intervening period, do you now have a memory of doing so?---It's only the fact that I would've had to have spoken to about his housing because he was coming to us two weeks after the incident. That's the only reason I say different to what it says in 38, your Honour.

I want to ask you some questions about 10 November 2023(sic). Now, you either knew then or now know that this was the day after the fatal shooting of Kumanjayi Walker?---Yes, I've been told that, yes.

And your text message was sent to Mitchell Hansen at around about 11:05 am? ---I'm not too sure when it was sent.

Would you accept if the time stamp in the text message itself is 11:05 am but the message was likely to be sent in the morning?---Prior to 11:05, yes.

And you had heard about the shooting at some point during the morning, within the Wadeye Police Station, is that correct?---No.

How had you heard about it?---I thought that's how I heard about it but in hindsight I've since been advised that I didn't go into the police station on that Sunday. I have no realised that I would've heard about it during an NTPA phone-in that morning as I was an executive member at the time, your Honour.

I see, so you went to an NTPA phone and had a conversation about the circumstances of Kumanjayi Walker's death, is that correct?---I don't think I would've had a conversation. It was more a listening about what happened.

What had you been told?---I can't recall exactly what I was told but I'm pretty sure that that's how I found out about it now in hindsight, your Honour.

Is it likely that you were told anything more than (a) a police officer had shot an Aboriginal man in a community and, (b) that there was some evidence that the Aboriginal man might have stabbed that police officer prior to the shooting?---Sorry, can you say that again? It was?

Would you have been given much more detail than the fact that a police officer who had shot an Aboriginal man at some point after the Aboriginal man might have stabbed the police officer?---I believe there wasn't much more than that, your Honour.

So, you certainly hadn't seen any body-worn video of the events within House 511 in Yuendumu Community?---I've never seen any of it.

You certainly haven't read any statements by any of the police officers involved? ---No.

You certainly haven't read any statements by any civilians who might have been witnesses to the police shooting?---No.

In fact you didn't even know who the witnesses to the police shooting were?---Sorry?

You didn't know who the witnesses, if any, to the shooting were?---No.

And in fact your evidence is that you mistakenly believed that Mitchell Hansen was one of the IRT members present at the time of the shooting?---That was my assumption due to him being in the IRT, your Honour, yes.

You didn't know anything about the status of the investigation?---No.

You didn't know whether it had commenced?---I'm pretty sure I knew that it would have commenced pretty early in the proceedings having I think the time of the incident was around 5:00 or 7:00, something like that. It would have been immediate.

You didn't know whether the accused had been offered or had given a record of interview?---I don't recall whether that was brought up in the conversation in the morning.

You didn't whether any of the IRT had been interviewed or given statements? ---I don't recall whether that was brought up in the conversation.

You didn't know whether Mitch Hansen might have given a statement?---Once again, I've said it again. I don't recall whether it was brought up in the conversation.

Given that none of these officers had in fact given statements if it was brought up in the conversation the only thing you could have been told was that they hadn't given statements. Would you agree?---As I said, I don't recall whether I was told they'd given statements or not. No, I don't know how I can answer that.

I'm not asking what you do or don't recall. What I'm asking - - -

THE CORONER: Were you just putting a proposition that we know now that none of the witnesses had given statements at that stage. Is that what you're suggesting?

MR GNECH: That's right.

THE CORONER: There had been some statements taken overnight.

MR GNECH: I apologise. I should clarify. You couldn't have been told that Mitchell Hansen had given a statement could you?---No. As I said, I don't recall what was brought up in that initial conversation.

In other words although you were told that the shooting had occurred you hadn't been presented with a shred of evidence about the circumstances inside House 511 on 9 November 2019?---I can't remember what was said in that conversation in the morning, your Honour. I don't know how I can answer that.

Now, you sent the text message to Mitch Hansen at 11:05 am. Your honest evidence is that you can't recall whether you sent other text messages to him or whether you had a telephone call with him on 10 November 2019?---That's my recollection, your Honour. It's a long time ago. I don't have any copies of the text messages or whatever. The only thing that I know is what's been presented to me during the investigation, your Honour.

And so quite fairly you're accepting that you might have, you might not have. You just cannot say honestly?---I know I had probably a phone conversation with Hansen in regards to his housing but I've never spoken to anyone about this.

I just need you to focus on the question which is your recollection of what you did and didn't say to Mitch Hansen on 10 November. Now, at par 29 of your statement you say you do not recall whether you sent him other text messages on that day or whether you had a phone call with him. Do you agree?---It says, "I do not recall having any telephone conversation with Hansen about the matter either on that day or at all after receiving."

Okay. And what I'm trying to clarify is that you just don't have a recollection of whether you did or didn't have a phone call with him on 10 November 2019?---I'm pretty sure I didn't have a phone call with him on 2019. I'm absolutely sure.

Can you please explain the reasons for your certainty there?---I'm pretty sure I would remember having a conversation with something as horrible as this.

So, that's despite your lack of, it seems, any recollection of what you were told by the NTPA during your briefing about this very matter?---Yes.

So, you're not sure what was or wasn't said during that briefing, correct?---I have no idea what was said in the briefing apart from what I've told you already.

And yet you're certain that you didn't send other text messages or have a phone call with Mitch Hansen about the very same thing?---I've tried to rack my brain, your Honour, to work out when it was and what was said but I cannot recall.

Now, you explain the reasons that you sent the message to Hansen in your statement. The first reason you give is, and this is at par 31, you say that the reason you sent this to Hansen was you believed he had been present at the shooting, correct?---As a part of an IRT team I thought he might have been there, yes.

In other words you believed that he was or might have been a witness to a fatal police shooting, correct?---Yes.

And you wanted to, and this is your word, prompt him about the relevant circumstances of the shooting, correct?---Where does it say that?

Well, perhaps let's focus less on the statement and you can give an account from your memory?---Well, you say here somewhere it says I prompted him. Can you show me where that is?

Sure, par 34. Why don't you turn to that?---Thank you.

Second sentence, "I (inaudible) with the commentary contained in the texts against each of the five criterion by way of a prompt as to what may be relevant in the circumstances of the shooting." You see that?---Yes I do.

And that's what you said in your statement?---That's what it says.

And that's what you did, correct?---That's what it says in the statement.

Even though you didn't know what those circumstances were?---It appears that way, yes, your Honour.

And even though some of the information you relayed to him about the circumstances was objectively false?---In what way?

Do you want to go to the text message? You've got a copy of it in your statement? ---Yes I've got it there, yes.

At par 30. You can see the line that begins with the, "M equals means."?---Yes.

And it says, "He had an edged weapon and told the police he (more than like said he was going to kill them)."?---I can see that, yes.

What evidence was there at the time you sent the text message that that is what Kumanjayi Walker said?---That's nothing to do with the actual incident, your Honour. That was how we were instructed to, an example of how we were instructed to train members when I was in Victoria doing the critical incident training.

Are you saying that Victoria Police's training was that when it is alleged that a police officer has shot someone they should assert that the person they have shot threatened to kill them? Your evidence was that what was contained in the passage I just read was consistent with your training at Victoria Police, correct?---It's an example of how it could be delivered to a class, your Honour. That's all it is.

Is it an example of how a police officer might justify using force?--- IAMO plus P is distinctly nothing to do with justifications. It's about mental health.

Forget the acronym. I want to focus on what you call a prompt about potentially relevant circumstances, "He had an edged weapon and told the police he more than likely said he was going to kill them." What on Earth does that have to do with mental health?---It's part of the training, your Honour. That's all it is.

What are you trained to do?---In regards to what?

What are you saying the Victoria Police trained you to do? Did they train you to say that people who are killed by police, threatened police - - -?---I don't understand what you mean.

I'm trying to understand your evidence. You told Mitchell Hanson he had an edged weapon and told the police he was going to kill them. What were you trained by Victoria Police to do? How did that connect with your training at all?---It was an - that's an example of how it was trained. It could have been anything. It could have been an edged weapon, a gun, a car, anything. It could have been used for anything.

All right. Do you want to have a look at the immediately preceding line, "Ability". "He had the ability to do so, because he both said it and was a young fit male who (looking at Rolfe) would have had a size disparity." You agree that's what you said? ---If that what it says.

Now, that's not an example you picked out of thin air. You directly refer to Rolfe? ---That's correct, if that's what it says.

Why should her Honour conclude that that's exactly what you were doing in the next line. You were suggesting to this potential witness the evidence he might give, in an attempt to justify the use of force by Constable Rolfe?---I can see that that's how it looks. In hindsight, I can see how it looks, but that was not the intention of sending that message.

Right. The other explanation you gave, and this is something we've already touched

on, was that this was somehow meant to help Mitchell Hanson's mental health. Do you agree?---Yes.

Okay. Where in the message do you say anything about Mitchell Hanson's mental health?---I would say that that was in the message that you don't see there that would have been sent earlier.

So these are the messages - - -?---This is an extract of what was supposedly the message that I sent to Hanson.

I see?---So, it could have been – there could have been other things. I can't recall. It's three years ago and I don't have a copy of any of the messages.

So you are conceding that there could be other messages between yourself and Mitchell Hanson on 10 November about this very subject?---As I said before, I'm not sure, I can't recall, but it would be possible. I don't know.

You seem very willing to allow for the possibility that you sent messages when they excuse your conduct, but very unwilling to allow for that possibility in other circumstances.

MR COLERIDGE: Is there a question, your Honour?

MR GNECH: Yes or no, do you agree?---No, I don't.

So, you agree that nowhere in this message do you ask Mitchell Hanson how he is? ---As a message of peer support that would have gone either before or with this, it doesn't appear there. This is an extract of the horrible stuff about a text message that I sent in private. There is obviously other stuff that was sent, but I just don't recall what it was. And it was about peer support, he was coming to us. It was about me trying to tell him that I would support him with whatever happened. I didn't know what happened, but that's what it was about.

THE CORONER: But it was you, as his prospective Sergeant, talking to someone who was coming to the station. It was work-related?---I guess so, your Honour, yes.

MR GNECH: I just want to unpack the notion of this – this notion of what is and isn't private for a second. If a person charged with a criminal offence made a call from prison to a potential witness and suggested that they should or shouldn't give certain evidence, that would be wrong even though it occurred in private, wouldn't it?---That would be a supposition, I guess, yes.

Based on what you knew on 10 November 2019, Mitchell Hanson might have watched Kumanjaya Walker die. Correct?---It appears that way from the statement, but I'm not sure, your Honour.

And you agree that that would have been traumatic, if that is what occurred?---It would have been traumatic for everyone, yes.

Well, you knew Mitchell Hanson knew and liked Kumanjayi Walker?---I don't know.

He might have encountered him in the community or had a working relationship with him?---I have no idea.

And you had no idea on 10 November 2019. Correct?---Yes.

All right. What was the description, what were the words you used to describe the young Aboriginal man who you believed Mitchell Hanson had watched die?---It's in there in the intents part there which – it's a horrible thing to so. Nothing to be proud of and - - -

You described him as a "shit cunt"?---That's correct.

Okay. You were denigrating a young man who, for all you knew, Mitchell Hanson had watched die?---Yes.

How on Earth was that meant to support Mitchell Hanson's mental health?---There's no excuse for that, the wording, there's no excuse at all.

I'm not asking you whether there's an excuse for it, I'm asking you why her Honour should believe that this was all about mental health in circumstances where you were saying things that might have been quite damaging to someone like Mitchell Hanson, who might have watched the events in House 511 unfold?---Things like that was how we dealt with it a long time ago, your Honour. They were horrible words used. There's no excuse. I apologise wholeheartedly to everyone affected. That's how it was back then, your Honour, and there's no excuse.

When you say "back then", back in 2019?---Well, back before I – right back in 1994 and those sort of times.

From 1994?---From 1998, since I've been a police officer, your Honour.

This is just a part of the culture?---It was back then.

And you said it in 2009, was it part of the culture then?---2019, it's in the text message, yes, I must have said it, yes.

And was it part of the culture then that this is how you spoke about people who police killed?---No, I don't think so.

Mr Nankivell, I'm not going to beat around the bush, you sent this message believing Mr Hanson was or might have been a witness. Correct?---I thought he was on the ground, yes.

To a homicide. Correct?---Yes.

You began the message by saying that “This was the way a police officer ‘has to answer his critics’.” Correct?---That was more to do with the demons that you go through when you’re involved in a police incident such as that.

You included prompts about the circumstances of the killing of Kumanjaya Walker. Correct?---It appears so, yes.

You were telling him how he could justify, legally justify, a fatal police shooting, weren’t you?---No, I wasn’t.

This was an attempt to influence the evidence that he might have given about the events of 9 November 2019?---Definitely not.

I’m going to put to you that you have deliberately lied about this in your statutory declaration, Sergeant Nankivell?---That’s not correct.

And that you have deliberately lied to her Honour today?---Definitely not. I don’t lie, especially in a court.

I’m going to ask you one final question which is about Mitchell Hanson’s message to Constable Rolfe, also on 10 November 2019.

I’ll give you a copy of this document, your Honour. It’s all material that’s already in the brief of evidence and in other MFIs. It only concerns the relevant communications. I ask that it be marked MFI II.

Now, on the first page, you can see your message at 11 am and five seconds?---Yes, I see that.

And immediately thereafter, you can see a message from Mitchell Hanson to Zachary Rolfe?---The message that I believe I sent starts at the intent side of things, yes, not the part about Mr Watt (?), that not me.

In fairness to you, I think that there has been some evidence from Mitchell Hanson at the very beginning of his message, his own word, but the content was then provided by you. But in any event, at message 2, you can see that Mitchell Hanson writes to Zachary Rolfe and says, “Ian Nankivell sent me this to send to you.”?---I see that, yes.

“He was involved in shooting someone in Vic Pol, so he said to send this through.”? ---I can see that, yes.

In circumstances where you accept, I think, that there was or might have been other communication between yourself and Mitchell Hanson and in circumstances where you say that you just don’t have a memory of what you did and didn’t say, you can’t deny, can you, that you might have told Mitchell Hanson to forward that to Zachary Rolfe?---I deny that emphatically. I know that message was for Hanson as a private message. Once it was sent to him it was out of my hands. I had no intention for it to

be sent to Rolfe. I deny that emphatically.

Nothing further, your Honour.

THE CORONER: Yes. Yes, Mr Mullins?

MR MULLINS: Yes, good morning. Thank you, your Honour.

XN BY MR MULLINS:

MR MULLINS: Sergeant Nankivell, my name is Mullins. I appear on behalf of the Brown family?---Good morning sir.

You have spent many years in both the Victorian and the Northern Territory Police, that's correct?---Yes sir.

And you have extensive experience in interviewing witnesses?---Not a lot of experience, your Honour, I was a one man police officer for 17 years and there wasn't a lot of - it was all community policing, it wasn't a lot of investigation, so not an over-abundance of amount, no.

You have extensive experience in the police union?---I was involved for five years with the Police Union, yes.

And that's the Police Union in the Northern Territory?---That's correct.

And the Police Union, of course, does very good work with the members?---As good as can be expected, yes.

And in your role as both a senior police officer and as a member of the Police Union, you were involved in mentoring young officers?---As a Sergeant that's your role, yes.

And you saw your relationship as Hansen one in which you were providing mentorship to some extent?---When - once he got to us, yes, that's correct.

Now, you said you haven't interviewed a great number of witnesses, but you have interviewed witnesses for crimes?---Yes.

And you understand in that mentoring role when you're dealing with young officers, you have to give them advice about the sorts of things they need to - or processes they need to undergo through the interview - interviewing?---Yes, that's taught to them in the police academy, yes.

And followed up by the sergeant on duty?---That - the sergeant gets involved after the fact, it's usually the constables who are doing the interviewing and the sergeant does the paperwork later on.

But it's not unusual for a constable to come to you and say, "I've got a difficult witness I'm going to interview, can you give me a hand with how I can approach it?"? ---I haven't actually been asked to do that - that I can remember. It's probably - it's part of the role to guide the young ones on those sort of things I guess, yes.

And if you were guiding a young constable on how to conduct an interview with, for example a complainant, you would say to the young constable, "Don't suggest answers to the questions"?---Sorry, is that a question?

Yes?---Can you rephrase it please?

When you are giving guidance to a young constable about how to conduct an interview, you would suggest to the young Constable that they should ask questions, not provide answers to questions, as part of the interviewing process?---Who - who - what - why - where - when - how process is how they - how they're trained and how it's dealt with in an interview.

Exactly, then when you ask "who" you don't then suggest an answer to the witness, do you? You let the witness answer the question?---Yes.

And what was it - who - what - when you're talking about the what, you - - -

THE CORONER: Who - what - where - when - why?---Who - what - where - why - when - how.

MR MULLINS: Yes, so for each of those questions you don't suggest an answer to the witness or a number of alternative answers, you let the witness answer the question, don't you?---Yes.

All right, so in your statement in par 33 you say, "I had intended - in sending the text to Constable Hansen I had intended to allow him to make his own assessment of what had occurred?---Yes.

"Thereby reducing the impact of being involved in a critical incident such as this would inevitably cause him"?---Yes.

But you didn't just provide a framework, you provided a series of answers to those questions?---That's how it can be perceived but that's not what was the intention, that's how I can see in hindsight how that looks but that is not the intention of what it means.

Well, why didn't you just provide him with the framework?---In hindsight that's what I should have done, your Honour.

All right. Now, finally you say that the IMO or DIAMO was - did you say - I may have misheard your evidence - did you say that was related to mental health?---The way I use it it's related to mental health but I've also used it in assessing use of forces when they came to me as a sergeant when I was in Tennant Creek and Port Keats.

Well, at par 18 - sorry - I'm sorry?---And at Port Keats.

At par 18 of your statement you talk about the framework and at 18.1 it says, "Firstly it provided a clear and standardised framework to identify the threat posed by an offender and more importantly, particularly for members that had been trained under the previous regime, it identified what a member should do to minimise their response to that threat". Do you see that?---Yes. Yes, I do, yes.

18.2, 'It provided a standardised framework that allowed members to give a clear and structured explanation regarding their conduct in a use of force incident" and so on?---Yes, I see that, yes.

18.3, "It allowed that member and those investigating a use of force incident to make an initial determination as to whether the use of force was or was not justified? ---Yes.

But you say it had an added benefit in that you could use - or an officer could use the framework to assess the conduct of another officer to try to deal with their own mental health issues?---That's correct and it works - it works for me and it - it was all part of my training and I've used it ever since.

Finally, the words that you used to describe Kumanjayi Walker that you've referred to already, you knew very little about the circumstances, that's right?---Yes.

You've apologised for the use of those words?---There's no excuse for the use of those words.

And you say that that reflected the culture at the time and the years prior about - about what?---I don't agree that it reflected any culture. It was just a horrible thing for me to write at the time. There's no excuse and I apologise emphatically for it.

And it was the first time that you had referred to the Indigenous man who was killed in this incident and you referred to him in those terms?---Yes. It's terrible. I'm sorry.

Thank you, your Honour.

THE CORONER: Any other questions? Mr Espie?

XXN BY MR ESPIE:

MR ESPIE: Sergeant, you - sorry, my name is Espie and I appear on behalf of NAAJA?---Good morning sir.

I will try not to repeat what questions that have already been put to you but just to clarify, in relation to your long service as an officer, regardless of what the situation was of any incident, the importance of preserving the integrity of evidence is quite a vital - or it is an important obligation on all police, is that right?---Yes.

No doubt you've taken witness statements of numerous witnesses, victims, etcetera, over the years?---Yes.

You would agree it's of vital importance to ensure that multiple witnesses' evidence is not contaminated?---Yes.

People shouldn't discuss their recollections or their observations with each other? ---That's a given. It's been a given forever basically.

And that's just with any general matters?---That's with all matters, yes.

But specifically, in relation to an incident where there's a fatality involving police - police - either a shooting or some other matter, you're aware of the general orders around segregating police witnesses?---I am now, yes. I hadn't read it at the time but there's about 130-odd general orders and I'm not over all of them. If it was about the watchhouse I could tell you that backwards but at the time I wasn't aware that there was a general order in regards to that but I've had a look at it since to see how - - -

But there was a shooting and you would've been well aware that there was going to be an investigation?---Yes.

A thorough investigation?---Yes.

And like any witnesses, putting words into anyone's mouth or suggested recollections that this (inaudible) - that's not something that should happen as a matter of course in any investigation?---That was never my intention, your Honour and I've said that before. It can be perceived - I can see how it's perceived to be the other way - that was never my intention.

Do you understand or do you agree that the - that perhaps the reason there's the specific reference in general orders to matters involving police where there's a death, it is important that it will often be the police themselves investigating themselves? ---Sorry?

So extra - extra scrutiny, extra caution needs to be applied?---As per the general order, yes.

But that's because people that may be witnesses and that were involved quite close to not only tougher if they're colleagues but quite potentially, I suppose, certainly getting a paycheque from the same place as the people that may be involved investigating such matters?---That's obvious, yes.

Do you think part of it is about transparency to the community and to the court process?---That's how it should be, yes.

So, regardless of whether you knew about general orders you knew fair well this was a police investigation including a Coronial investigation and otherwise?---Yes.

You've given evidence today that this acronym, it's not about justification. It's about mental health you said?---That was the tool that I used and under it is mental health the majority but I also used it when I was a supervisor when assessing use of force. If the member couldn't deal with the IAMO then they had answers to deal with.

And the context of when and how you sent this text message, you're still suggesting it was about mental health and wellbeing of Rolfe?---As soon as I heard about it, it brought a flood of memories back. I was in a world of hurt myself.

Perhaps I'll just take a step back to the question I failed to clarify. The reasons I asked you those questions about the importance of not contaminating evidence, is that that time that you sent that? Just to clarify, you thought there was a possibility that Constable Hansen may have been involved?---Yes.

Notwithstanding that there's reference to Constable Rolfe in the text messages? ---I'm sorry. I don't understand the question if it's a question.

Well, perhaps I'll ask it another way. Constable Hansen's evidence was that you had provided him this acronym for him to then provide to Constable Rolfe?---I've already answered that, your Honour. There was never ever an intention other than a private message to Hansen. So, again I deny that emphatically.

And it's just about justification. It's about mental health?---Sorry, I didn't hear that.

It wasn't about anyone trying to justify or falsify their account. It was about helping him sleep at night?---That's exactly right.

The context at the start of your message, sergeant, refer to "remember answers his critics with" and then there's reference to IMAOP?---Yes.

Answering his critics. You don't say at the start of the message, "Read this. It'll help you sleep at night and justify what may or may not have happened." Did you read it?---That's what it says but there's a different meaning for the critics.

What does that mean?---The critic to me, my main critic has always been myself. And in that circumstance where you have to try and, your mind is in a world of fog. If you've ever been involved in anything like that, and pity help anyone who ever has been, no one thinks straight. The IMAOP, as I said earlier, is designed to guide you through the process when your mind is full of fog and dread.

THE CORONER: Normally the word critics is when it's used applies to other people pointing?---Yes I understand. I can see that, your Honour, yes. I understand.

And you didn't know Mitch Hansen well at all at that stage?---No, your Honour.

But you are telling me that you believe when you used the word critics he would understand that in the fairly unique way that you understand the word, namely critical of oneself?---Yes.

MR EPSIE: But you would agree in the context and at the point of time that you've sent this message it could quite easily be perceived and backed by Mitch Hansen and if, in fact, it suggested the fact that he had forwarded it on to Mr Rolfe that could be perceived as the critics being those investigating. Those scrutinising their conduct?---The first part of that I didn't tell Hansen to send it on. As I said earlier it was a private message. But as I said I can see that that's the case, yes.

Well, I'll ask you perhaps in a different way, anyone involved in that matter having read the entirety of your text message in the context that it was raised, answer the critics in this manner could perceive that as this is a way out. This is a way to justify what's happened rather than this will help you sleep at night?---I can see that in hindsight but that was never the intention of the message, your Honour, and I didn't, as I said, there was never any intention for anyone, to be seen by anyone other than Hansen. I didn't tell him to send it on to anyone else as you suggested.

THE CORONER: You didn't have a private relationship with Mitch Hansen did you? ---No, your Honour. He was coming to us as one of our members and Port Keats.

So, it's a work related message isn't it? It's the only relationship you had?---As I said, your Honour, the whole thing was a pretty emotional time for everyone including myself.

But that doesn't change the nature of your relationship with a work colleague. You had had almost no contact with him at all. He's coming to you as a junior member of your station and you're communicating with him in that capacity?---I appreciate that, your Honour.

So, it's a work related message that you're sending?---Yes.

MR ESPIE: Perhaps just further clarity on that work related in the sense of you being a police or more specifically in your role and capacity as an executive member of the NT Police Association?---I don't it had a capacity in either way to be honest. As I said, I've been there. My mind was brought back to a situation and I wasn't thinking properly.

And given consideration of all your obligations as a police officer it certainly shouldn't have been your duty or your role to provide any assistance in how to answer questions to someone that's about to give evidence, give a statement, give an account or interview of a very serious incident such as this?---At the time I didn't think it was that way. It was to do with trying to guide him through a horrible time.

THE CORONER: I guess that's not the question. It's not what you thought. You were just being asked to reflect on your duty and responsibilities at the moment.

So, could you ask the question again, Mr Espie.

MR ESPIE: In the contexts of all your obligations to maintain evidence or for the police force as a whole to ensure the maintaining of integrity of evidence and witnesses and now you acknowledge your awareness of police general orders relating to totalities involving police you agree you had no obligation or you're not acting in the context of your duties and as a police providing the text messages that would assist in how someone answers questions of (inaudible)?---I believed at the time it was merely peer support. I was a peer support officer at the time responsible for that area and that was all it was.

Do you understand why the family of Kumanjaya Walker and in fact the broader community listening to this having seen your messages the vulgar, disgusting way you described the deceased person would absolutely lose faith and confidence in the police, perceiving the way this message – or the way this message could be perceived?---I would hope not, your Honour. I made a horrible mistake to which there's no coming back from, as far as I'm concerned.

Do you understand that not only confident in the police to protect, do you understand that there's a perception that this sort of – that this text message could be seen as a disregard for authority of your superiors.

MR GNECH: Objection, your Honour. I think this question has been asked a thousand times. If my friend could offer new (inaudible) questions.

THE CORONER: No, this one is going to a disregard of authority of his superiors. I think it's perhaps referring to an earlier part of the text message that hasn't been - -
-

MR GNECH: Your Honour, my client has answered a number of questions about the contents, the use of that name. He's outlined that it was a mistake.

THE CORONER: I think – no, but I think this is going to the first - - -

MR GNECH: We're going around in circles answering (inaudible). Perhaps, my friend could be a lot clearer in the way he's asking the question. If he's got questions that rather than leading him in the numerous statements. My client having difficulty following questions about - - -

THE CORONER: Sure. I thought he was asking about the – I might be reading this wrong, anyway.

MR GNECH: I think that might be the problem, your Honour, everyone's wondering what the questions are at the moment.

THE CORONER: That's all right. Sorry, I'll just - - -

MR ESPIE: Sergeant, perhaps I'll rephrase that. Looking at this, you understand

how it can be perceived that answering the critics might be suggesting some disregard for the chain of command; disregard for quality of police processes?
---I can see that in hindsight, but that was never the intention.

And any fatalities, as you're well aware, in circumstances like this that are tragic, you would no doubt understand that the role of the police is to protect everybody in the community, including protecting police themselves, your colleagues and members?
---That's our motto, yes.

There's also a role in the duty of police to protect people for their own actions, to some extent, to ensure that there is the safest possible outcome?---So, the door shut and I didn't hear – I'm hard of hearing, I didn't hear what you - - -

Part of that duty of keeping everybody safe is keeping people safe from themselves when they break the law, when they do something that causes police to need to use force. Your duty to do things as safely as possible. That's why there's - - -

MR GNECH: Is there a question, your Honour, rather than just statements?

THE CORONER: I'm not sure where this is going, Mr Espie.

MR ESPIE: Sorry.

THE CORONER: That's all right.

MR ESPIE: You understand that Kumanjayi Walker deserved not to be treated as – or not to be described in the vulgar way that you did describe him?---Most definitely, yes.

THE CORONER: He's already answered those questions.

MR ESPIE: And that time – nothing further.

THE CORONER: Mr McMahon.

XN BY MR MCMAHON:

MR MCMAHON: Sergeant, you know this inquest has been running many months, don't you?---Sorry, who are you, Sir?

Pardon?---Who are you, Sir, sorry?

Yes, thank you for reminding me. My name is McMahon and I act for the Parumpara Committee, which is a group from Yuendumu, a group of Aboriginal people. Do you understand that?---As to where you're from?

Yes, you're a (inaudible)?---Yes.

And you understand the inquest has been running for a number of months?---Yes, I do.

And are you aware that on occasions in this court, police officers have expressed deep regret for attitudes which they once had, but which they no longer have?---To be brutally honest, I've never followed one day of the Coronial because of the horrible memories it brings back for me, your Honour. So, I don't know what's been said.

You're referring to the involvement in the police shooting in 1994?---That's correct.

That was a police shooting of an Aboriginal woman. Is that right?---No.

Was that a woman – is that the Richmann (?) shooting?---No.

Which shooting were you involved in?---One in Shepperton, a name - - -

And how did Mitch Hanson know - - -

THE CORONER: Just take a moment, Mr McMahon.

MR MCMAHON: Pardon, your Honour?

THE CORONER: Just give the witness a moment?---Alison Tully, your Honour.

MR MCMAHON: I won't ask you any more questions about that.

THE CORONER: It obviously still deeply affects you and it makes this process extremely difficult, and I - - -?---Yes, your Honour.

- - - acknowledge that?---I apologise for - - -

No, no, don't apologise. I just want to acknowledge that you know exposure to trauma and the trauma that police officers are exposed to is something that we are all, as a community, continuing to learn about and try and grapple with. And I know – well, from what I understand, that hopefully there are some positive changes occurring within the police services around Australia to better acknowledge the trauma that police suffer from; to have better services to address that trauma. But more importantly, for services to think about ways to protect police better from actually – you know, suffering from traumatic incidents, putting in protective measures so that people don't become traumatised by their work?---It's a lot better these days, your Honour. That's why I was a peer supporter, to try and help.

Unfortunately, when we have to examine - - -?---Yep.

- - - details of events like this, it can be retraumatising, and that's something that we have to be careful with as well?---Yes.

THE CORONER: Mr McMahon?

MR MCMAHON: Thank you, your Honour.

Sergeant, just so you understand what's going on, we make submissions at the end of this. And at the moment, our submission will be along the lines that, not only did you make a terrible mistake at the time, but that you are dishonestly failing to admit to that now. Do you understand?---I understand, but that's not correct.

The first proposition that I want you to be clear about is that our submission would be that your evidence that this message which brings you to this court today was a message concerned with mental health, the mental health of Hanson, is just nonsense?---That's not correct.

Rather, the message that you sent was a message which clearly gives a witness a narrative, and that's a narrative that will protect him or the shooter?---I see it can be perceived that way, but that's not the intention at the time.

Well, just to be clear, we will be submitting that the words on the text clearly show that that was your intention. Right?

MR GNECH: Your Honour, I object. The proceedings, at this point in time, are for the examination of my client. It allows my learned friend to ask questions. It is not a forum to make preliminary submissions to the court. If there's a question to be asked, I would ask that your Honour require my learned friend to ask questions and continue to be - - -

THE CORONER: All right, well I think he's putting a proposition about what he is going to say on behalf of his clients in relation to this evidence, and in order for this witness to be able to respond, if he would like to do so. So he's giving him the opportunity to respond to those - - -

MR GNECH: I don't disagree with that, your Honour. But those propositions should still be formed as questions.

THE CORONER: Sure. The proposition, I suppose can be put, and then a question can follow.

MR MCMAHON: So why I'm questioning you, Sergeant, just so you're clear, is that we are asking you whether or not you agree with the proposition that what you've done here is deliberately give a narrative to a witness with the purpose of protecting that witness (inaudible)?---Definitely not.

And the narrative essentially is as follows' "That the bloke was armed" although you don't used the word "bloke". "That the bloke was armed. He threatened to kill. He was young and fit and capable. He got close so the shooter had no options for other types of use of force". That's the guts of the message that you sent isn't it?---That was the training that we were given, yes.

What do you mean on Earth by "training"? The training you were given with regard to messages to send, or how to conduct yourselves in the presence of someone who is armed potentially?---The latter.

So you're reminding the person whom you're sending to the message with intent, that the training is, if someone gets too close with an edged weapon you've got no option to use other uses of force other than lethal force? That's the training you were given?---No.

Well, just clarify it, what is the training you're referring to?---Well, as it says in the statement, the - in the preclusion side of things is the member's behaviour. All the other stuff is the other person's behaviour. If there's no other option but to do what occurs or what you think you have to do, such as tactical disengagement, another weapon - a spray - a baton - any other option available to them, then the preclusion is you had no other option.

So rather than focussing on mental health is what you assert, what in fact was happening here is that you were guiding the person - to use your words - from a moment ago, guiding the person through the process by telling him - reminding him of what his training was and what he ought to be saying?---No, I don't agree with that. That's not the context it was sent in.

Well, can I suggest to you that's plainly what the words on the page are saying, at the top of your message - - -?---That's not the context it was sent in.

You've got the message in front of you there, don't you?---Yes.

Can you go to the third line, "He should just say, "The body-worn video will show the true story"? Do you see that?---That's not a message I sent.

Where does your message start?---Where it talks about the (inaudible) - as your Honour said a minute ago, that was what Rolfe agree - not Rolfe - Hansen agreed that he sent to - that he had sent. That has nothing to do with me.

So your words start, "The member has to answer his critics"?---I believe so, yes.

So you're saying there to Mitch Hansen, you're referring to "the member" - which member are you referring to?---Any member.

Any member?---Yes.

You're not referring to Rolfe the shooter?---Definitely not.

Can I suggest to you the plain words of what you have written there are that you are telling Mitch Hansen that the member - namely the shooter, Rolfe, - has to answer his critics in the following say?---No, I explained that to your Honour before.

And what you'd in fact done is present - as you say - guiding Mitch Hansen through the process, you presented an excellent legal defence to a possible charge, namely that you were being threatened by someone who was fit, young and capable with an edged weapon, too close to use any option except lethal force - and that's what the member has to say - that's what you've said there, isn't it?---That's not what the intention was, sir.

Well you say that's not what the intention was. But I'm suggesting to you that what you've done, claiming of the words - claiming so - you provided him with a tight, compact, intelligent, comprehensive legal defence to be used in a scenario such as this?---It's not what it was intended for.

So when you say, "The member has to answer his critics" and then you go on with what you've describe there, you're trying to say to this court today that, "In terms of mental health and me reaching out to you, many contexts like this, here's some advice for your mental health". That's what you're saying is actually happening on this page?---I've answered that before. That's what I said, yes.

At the top of the message that you sent where you refer to "intent" is a word you've probably used 20 times already in your evidence today, with regard to "intent" you say, "The shit cunt was telling them he was going to stab the police". And you'd apologise for using those words "shit cunt". My question is why did you use those words?---That was - that's a reference to any person who was perceived to be a bad person. But in the context that you believe it's been written in, it's a horrible context to see for anybody, especially - - -

You knew the deceased was Aboriginal, did you?---I believe so, yes.

And in that context, when providing what we suggest to you is a tight, compact legal defence, use those disgraceful words to describe a deceased young Aboriginal man. Is that the way you typically speak of Aboriginal people who come into contact with the police?---Definitely not.

Is that the way you speak of Aboriginal people who have just been killed by the police?---No.

Well, the answer is "yes" because that's precisely what you did?---The answer is "No".

Did you describe the deceased young Aboriginal man who had come into contact with the police, as a "shit cunt"? Yes, or no?---That's what it appears in the text but that was not what it was intended to. I can see, in hindsight, where it comes from, where it is. There's no excuse. If it's been - there's no excuse to talk about anyone in that manner.

Can I suggest to you that in sending this what we say is a tight, intelligent, legal defence to a member who you think is in trouble and describing the deceased young Aboriginal man as a "shit cunt" in a message which you think will remain private,

what you are doing is revealing your attitude to Aboriginal people and how to deal with any investigation of brutality by police against Aboriginal people?---It's definitely not. You're basically saying that I'm a racist person. That's far from the truth. I spent two years in Port Keats looking after the folk out there. I actually applied for the sergeant job at Yuendumu before Julie Frost got it and I missed out because I was held to tenure. I wanted to go out there and help these folk. So there's no excuse for talking about anybody in that manner. I wanted to go there to help the people but Julie Frost beat me to the punch. And that's God's honest truth, your Honour. I then spent two years in Port Keats looking after the Waramanga people. I'm proud of the way I've looked after these folk.

I started my questions with you, asking about people making mistakes and I suggest to you that the clear message in the words in your text - even if it was what you say is not your habitual way of being, the clear message is an angry, racist message designed to protect the boy in blue against what you perceive to be coming as a strong (inaudible)?---Definitely not.

If your Honour pleases.

THE CORONER: Yes, Mr Boe?

MR BOE: Thank you.

XXN BY MR BOE:

MR BOE: Sergeant my name - - -

MR GNECH: Just before there are any further questions. Mr Boe has a right to ask questions on behalf of his clients. Much of the same ground has been - - -

MR BOE: I am not going to do - there is only one issue I am pursuing.

MR GNECH: And given the subject matter I just ask that people cover new areas or stay away from areas that have been traversed in some detail, your Honour, which are evident and no need to ask.

THE CORONER: Sure.

MR BOE: Thank you, your Honour.

Sergeant, my surname is Boe. I appear for the Walker, Lane and Robertson families?---Good morning sir.

I only have one issue I wanted to ask you, arising from some of the questions. To be clear, at the time you sent the text, you were aware, or had assumed, that Hansen was not the shooter. That's correct isn't it?---Yes.

When you were asked a question by Mr McMahon as to who you intended to refer to as the member your response was firstly any member, correct?---Yes.

And then when pressed as to whether it was there was a reference to Rolfe you said definitely not, correct?---Yes.

Is it more precise that what you were intending to say was not to exclude Rolfe as being a person referred? Is that correct but not only Rolfe?---Sorry, can you say that again?

Any member would include Rolfe, correct?---It would include every member of every police force, yes.

And it would include Rolfe, correct?---He's a member of our police force, yes.

And therefore your answer definitely not was not to say it was not a reference to include Rolfe, correct?---I guess so, yes.

Your meaning that it was not only Rolfe that you're referring to. Is that correct? ---The training was the training. That's how it was.

No, no. The reference to member was not intended in your answer to exclude Rolfe. Is that correct?---I guess so, yeah, in hindsight, yes.

Thank you.

THE CORONER: Any other questions?

WITNESS WITHDREW

THE CORONER: Should we take the morning adjournment now before we - - -

DR FRECKELTON: Yes. And then it's our wish that we continue with Deputy Commissioner Smalpage, yes.

THE CORONER: Thank you.

ADJOURNED

RESUMED

THE CORONER: Deputy Commissioner. Where were we, Mr McMahon.

MR MCMAHON: Thank you, your Honour.

MURRAY SMALPAGE:

XXN BY MR MCMAHON

MR MCMAHON: Deputy Smalpage, as you know, my name is McMahon and I appear for the Parumpara Community as well as the Community of Yuendumu. And in case it hasn't already been made plain from other questions, for those who are watching from afar, not only have you been in for pretty much the entirety of the Inquest; that's correct?---Correct.

But also you've made yourself available outside of court to talk to the lawyers involved or any of the parties and have discussions on many issues which have now been the subject of evidence?---I've been here frequently, your Honour, yes.

And it's fair enough to say, isn't it, that when you look at the breadth of the reform that's been going on in the last few years that it's been a massive enterprise?---Yes.

And I hesitate to use the word revolutionary in the context of police reform but it's the major and significant briefing in and effort to improve the Northern Territory Police Force?---I believe so, your Honour. I think the most significant in a decade or more.

You're just going to have to speak up with me, I'm afraid?---Sorry. I think it's the most significant - one of the most significant ones I've ever been involved with and from - I think for over a decade.

And it's obvious, isn't it, that not only these kinds of reforms that you've outlined either in your evidence but also in the documents which you haven't been taken to which are part of your evidence in the affidavits, that a great deal of administrative skill is needed to implement the reforms, correct?---Yes.

And a lot of vision and courage is needed to undertake and complete that task?---Yes, your Honour.

So recognising all of those things and in that context, I'm going to ask you questions which are not designed to undermine that work or to be critical of the work that you've been doing but really to point out that in some areas significantly more is needed, do you understand?---I think - yes, your Honour, and I'm here to listen and to come up hopefully with solutions to improve out service delivery.

So I'm going to ask you questions about guns and - - -?---Yes.

I'm telling you so that before you answer you know what's coming later?---Yes.

I'm going to ask you questions about guns and dogs?---Yes.

Training at college?---Yes.

Racism?---Yes.

And militarisation?---Yes.

In the Northern Territory Police Force. You follow?---Yes.

Now, you commenced your evidence with an apology and it was a wide-ranging apology which I suggest was a measure of the impact that this case has had on the Northern Territory Police Force. Do you agree with that?---I would.

Because obviously I think (inaudible that apology, wasn't it?---Yes.

And you're aware that you're probably, in terms of time - I may be corrected - in terms of time you're probably the longest witness we've had in this Inquest. Are you aware of that?---My pleasure, your Honour.

And you've given hundreds of pages of evidence in affidavits which most people watching won't get to hear about but it all amounts to a great deal of effort which is obviously appreciated by everybody. So just looking at your apology you apologise for the carrying of long arms and you said, "We apologise for carrying long arms in Yuendumu and acknowledge the apprehension that caused the community." Do you remember that being in your apology?---I do.

And it's clear from all of your written evidence and your oral evidence that the idea of open carry long arms around the community that practice has effectively gone from the Northern Territory Police Force?---It's not supported, that's correct.

Correct? Except with some very clearly defined examples - exceptions?---Where there's need.

A high-risk job with TRG or something like that?---Destruction of an animal, some appropriate task, your Honour.

When you say, "We apologise for the carrying of long arms in Yuendumu" and building to that is the broader Territory-wide response to carrying of arms in communities, what is it that is the basis for that apology? "We apologise for carrying long arms in Yuendumu." What's the basis for that apology?---Clearly - - -

Why did that cause apprehension?---I think I refer - referenced that, your Honour, in the following paragraph to the Coniston massacre but specifically for the Community of Yuendumu I'm not aware where we've routinely carried long arms anywhere else. I've yet to be - I'm aware of this instance, so specifically apologies directed to this

community but I'm not aware of long arms being carried anywhere else in my time here.

Fair enough. So what's the basis for the apology? Why is it that you feel the need to apologise?---The evidence that I've heard before this court, your Honour, has identified the level of angst and distress it caused the community.

You're aware from sitting in and from observing generally that on behalf of the Parumpara Community people of Yuendumu we've asked plenty of questions about the carrying of Glocks as well and made - you've given significant evidence in your affidavits and also orally about that. And we've asked questions about - to the effect that in our submission we would say police have mistakenly repeated that they need to carry those guns. Do you understand that's an issue between your perspective and the perspective of my client, don't you?---I accept - I accept that is your perspective, yes.

And when you were being asked questions in-chief from Dr Freckelton and it was mentioned in passing to countries that - where police routinely do not carry guns or a holster? Do you remember that?---Yes.

Countries such as England and Wales. Dr Freckelton didn't mention all of these but just so that everyone understands the countries we're talking about, countries like England and Wales, Ireland, Norway and closer to home New Zealand, Fiji, Samoa and those countries. Are you aware of all that?---I accept that, your Honour.

And to summarise what you've - covering a wide range of affidavit material and oral evidence you say that from your perspective and by you throughout these questions I'm assuming the point that Mr Boe made that "you" means the Northern Territory Police Force?---Yes.

If they're carrying guns on their - on the hip is a necessary thing to call part of the kit and essential to the Northern Territory Police?---Yes, it is.

And you say it's a matter of safety because you don't ever know what might be just around the corner?---That's correct.

So to contrast that you also - correct me if I'm wrong, but ALOs don't carry weapons?---No, they don't. They're not sworn police officers.

But of course they're often in similarly dangerous situations as sworn police officers?---I would hope not, your Honour.

Well, for instance, you gave an example as a justification an example of domestic violence, an ALO might well be a suitable person to have around when police attend domestic violence situations?---I would expect, your Honour, that the ALOs perform a liaison role. They're not performing a response role. Their role is not to be actively engaged sitting in police vehicles, tasking to police response. They're to provide community support, community engagement, provide us guidance. They're not

police officers and I don't expect them to be treated as such. I don't expect them to perform as such.

Do they ever wear a uniform?---They wear shirts with a motif on them and I think dark blue pants.

What does the motif say?---It's just an Aboriginal designed T-shirt.

You accept that - we won't go over what night patrol does. A lot of evidence is in this court already about that and you know a great deal about it, I'm sure. But you accept that people on night patrol regularly attend situations which are potentially dangerous?---Potentially, yes.

And you accept of course that they do that without carrying lethal weapons?
---I accept that, your Honour. They're not police officers.

And you know that this court has heard evidence from Aboriginal people that police carrying guns - by guns I'm talking about Glocks now - causes anxiety in the community rather than comfort to them. You've heard that evidence?---From my observations both from attending at Yuendumu and others I accept, yeah, there's a sense that they would much prefer we didn't carry firearms.

And going back to your theme that it's necessary to do so so that police can be ready for whatever situation evolves you used the example of the recent murder of police in New South Wales - pardon me, in Queensland?---I use that as one example. I can give dozens if you wish more, your Honour.

Yes, I know, but to use your example you accept that the tragic - that tragic case, the police in that case had conducted, according to police command - and I'm getting my information from - on this question from watching police command speak on ABC news shows and so on that there was a risk assessment made before the police went to that property, as we would expect. You accept that that happened?---Yeah.

And that the police who attended that property were in fact armed?---Yes.

So despite the risk assessment and despite being armed and not knowing what was around the corner in that context they were nevertheless murdered and you accept that it's an example that there are some kinds of murders and assassinations that being armed simply won't be able to prevent. Pretty self-evident isn't it?---Well, your Honour, I have to - - -

You'll get a chance to say the philosophy that you want to talk about?---I am struggling to reach a simple yes or no answer on that because, again, I'm not - - -

THE CORONER: When there's so many variables. There are so many variables?
---If someone creeps up behind you, shoots you in the back of the head and you've got a gun it's no value to you at all. There's instances where beyond the comprehension of normal - - -

MR MCMAHON: The concession, that's the kind I mean?---I accept that sometimes you can't predict every contingency. I accept that, your Honour.

Now, I don't expect you to be an academic who's read a whole lot of research papers on the 30 or 40 significant issues that you had to deal with. But I do want to take you to some paragraphs from some of the material that's on the brief and you probably haven't read it. It's the recording of (inaudible) for the benefit of others which is exhibit 10-10AA. Just by chance has that been given to you, Professor Kineam?---No I haven't got that, your Honour, no.

He's a professor at the University of Technology in Sydney?---No I haven't got that. I haven't read that, your Honour.

As I say, I don't expect you to have read or studies some of these issues. Again, I appreciate that much of what you say is based on your professional experience rather than something different to that. But I just want to put to you some ideas that he has put in his report which is part of the evidence that her Honour will have to consider. And that concerns this question of police carrying pistols?---Yes.

So, he says at par 32, he's talking about - - -

THE CORONER: [Edited] has it here. Do you want it up on the screen?

MR MCMAHON: Not really, your Honour.

THE CORONER: Okay.

MR MCMAHON: I think it will be a distraction.

I'm just going to put some ideas to you. If you want them on the screen just say so.

I now remember that we asked for it to be ready to be put on the screen.

So, can you see that there, Deputy Commissioner? So, this is a report which covers a number of issues but the paragraphs I'm looking at, particularly par 32 and 33, and we don't want to get lost in the statistics and the data but rather the broader picture. Now, the broader picture here is that Professor Kineam is referring to comparisons in police killings across numerous countries. You understand that? ---Again, your Honour, the terminology police killing, does that necessarily refer to a shooting or is it an armlock, a stranglehold, some other - it doesn't - - -

It's based on fatal shootings?---Okay, thank you.

So, you see the second line at par 32 primarily based on fatal shootings. So, some of them may not be fatal shootings?---Yep.

But to get to the end point, and we'll go to it in a minute, but the end point is a question of whether communities are safer or not safer just because the police carry guns. Do you understand?---Yes.

That's the issue and there's a comparison there of a rate of 10 million of the population in the US 33.5 per 10 million of the population. That's how many police killings there were. And there are some other statistics we'll come to today but just so you don't get distracted, Deputy Commissioner, not very interesting statistics for the USA because they're a completely different environment where there are something like three police killings every day. Every day for reasons which are not necessary to explore here. That country's not much use to us. The next set of country is more use. You see the rate there that Canada is 9.8 where Australia is 8.5. Much lower numbers for the Netherlands, New Zealand, Germany, England and Wales. Do you see that, par 32?---I do, your Honour, but I'm not sure the currency of that figure. Some recent data I believe New Zealand may be somewhat different now.

This may have been written before the terrorist attack. Is that what you're referring? ---And some other literature I had read around shootings.

THE CORONER: There's a statistic there that leads to 2021 so it's fairly recent? ---And there's been recent police officers murdered in New Zealand. There's been a number of high profile police shootings in the last two years that I'm aware of, your Honour.

MR MCMAHON: So, if you turn to par 33 the point that the author is making is that Canadian and Australian police who routinely carry firearms have higher rates in other countries in the prison policy in issue. Now, when we're looking at this the countries that are of most interest to us are obviously countries that are as close as can be sensibly can be done comparable to us. And countries like New Zealand, England, Australia and Canada which have many cultural similarities. Of course every country is different but we appreciate of all the countries in the world those do have many comparable ideas in terms of the history of government?---Democracy. Yes, similarities, yes.

And the positive role police are meant to play in the community as opposed to having a military presence?---Strong oversight and different body. I accept that, your Honour.

So, that's what we're dealing with. Halfway through that paragraph you'll see he says that, for example, "On a yearly basis Australia regularly has double or more fatal shootings compared to England and Wales although there's only half the general population. And this pattern has been consistent over the longer term, effectively between 1990 and 2021." Do you see that?---I accept the figures, your Honour.

And then the next sentence which is really the one that matters for our purpose is that, "Other research suggests that there is no clear evidence that armed police automatically or necessarily make a standard community safer." Do you see that? ---Yes, your Honour.

So, the reason that I'm putting all that to you, as you understand we'll be putting submissions later and relying on this material and it's in contrast with the approach that you've taken in the witness box which is that it's necessary, essential and integral to policing that the police be armed?---Your Honour, I think there's some contextual differences in terms of the localities of the country, their size, their demographic, their population, their locality for support. You know, you're in London CBD they've got armed, they do have armed police within very, very close proximity to respond. We're talking very remote parts of Australia with little or no support for hours at times in some instances to get support and help. I think the community expect that the police will be there to assist and the Glock is just a tool that we use and it's a defensive weapon primarily.

THE CORONER: You've talked about, sort of, backup and resources being available quickly in other countries or other locations. But in my experience most policing in communities is not done without a vehicle. Why couldn't guns be kept in the vehicle which is in invariably very close by?---Your Honour, I can give numerous examples in my experience where police officers have been beaten, have been injured, and the only thing that they are alive today is because they had a firearm. And they had no fire on them they wouldn't have had the opportunity, the ability to get to a vehicle to get help. And I'm aware from time in the Pilbara where we had an armed police officer who was viciously assaulted on a routine traffic stop and was knocked nearly unconscious on the ground and managed to withdraw his firearm and shoot that person who subsequently we find had murdered two women in Melbourne and was driving around Australia aimlessly. He's be dead today if he didn't have a firearm. In my experience - - -

There are examples - I appreciate the depth and breadth of your experience and that you can find examples like that and no-one doubts the relevance of what you're saying?---Thank you.

But here are also many other examples to be tackled, for instance - and we will come to it shortly, if policing had been done differently on the 9th of the 11th and the police were not carrying lethal weapons on that evening Kumanjaya Walker would not have been killed. So we can draw individual examples. The purpose of what I am doing here is not to support or to propose individual examples but to make a point to you that there is sensible and significant research which shows that whether or not reasonable minds differ, nevertheless it is sensible to say that arming police does not automatically make them or communities safer. Looking across many countries which are similar to Australia, over many years. Do you appreciate that?---I accept that that's what that academic data shows. That's not my lived experience. That's not the Australasian police position except from New Zealand. Every police force within Australia, by agreement, are armed.

So, I mean, to be blunt about it, Deputy, on a number of issues I am going to come back to with this point, that just because something has been done a certain way forever doesn't mean it has to be done that way into the future and I know that you accept that from other areas of your work?---Where the Northern Territory Police Force can improve our services - our interaction with the community, we remain committed to looking at options, yes.

And on this point, which I am not going to keep labouring - but on this point I am pointing out to you something which doesn't really seem to have emerged from your affidavit material and from the research that the people who assisted you to write your affidavits?---Yes.

At police headquarters - whoever they are - have come to grips with is the fact that there is a sensible body of research to show across comparable countries, where there are rural and isolated - in New Zealand, Wales, England, Ireland and there are plenty of isolated rural villages and communities in those countries as well with people who are in so many ways culturally similar to ourselves, that in those contexts, the research shows over a 30-year period that it's not automatically or necessarily making the community safer just because police have guns and there is lots of data to show that - to the contrary. Now, I appreciate your views, I am just pointing out to you so that you know where we're going, that this is something that we see you haven't come to grips with - do you understand?---Thank you, but I don't agree.

Okay. And we will be saying that the way you talk about it - which is fair enough - is a deeply ingrained assumption that you and executive no doubt hold, and that it requires a major shift in culture and attitude and part of that shift would be an openness to the ideas that such as the ones I'm putting to you right now, correct? ---I accept that, your Honour, and I think, again, perhaps it hasn't been articulated clearly but I think there are instances where police - when they're not performing stringent operational duties, don't carry firearms, for example. If we're out there doing operational patrolling, we're always going to be equipped to respond to any task. I mean, police officer off duty walks down to the store at Yuendumu to buy food, when they're of duty they're not going to carry a firearm. The community still know they're a police officer. They're still under an obligation they're going to respond to something if it happens but when we're performing operational tasking duties it is one of the necessary tools that we use and it's also to protect our members and an obligation upon us, by law, to provide adequate safety equipment to our workforce.

One of the points you just made is a powerful point that we will be making in our submissions, that a police officer walks down the street in Yuendumu, known to be a police officer, where anything might happen at any time, that person is armed if they're not doing operational duties?---Every day, you know, police officers work x number of hours. But when they're responding to tasking, they may be called and they're equipped and anything could happen, I expect, and we - I think the community expects - that the responders are equipped to be able to preserve life and property and help people.

And just - so it's clear in your mind because one answer you gave the other day when you used the word "unarmed"?---Yes.

We're not suggesting police should be unarmed, we're suggesting effectively no change to the accoutrement belt except the capacity for immediate lethal force. Do you follow? So you've got (inaudible) tasers, batons, handcuffs and so on. You can understand I'm not suggesting that police should be unarmed - do you understand that?---I accept that, but again, in context, your Honour, the training provided doesn't - it's instantly means you go to lethal force. There are - that's why we provide other lethal - non-lethal force options to police officers so that the use of a firearm is a last resort.

But you understand, this is where the debate is, Deputy, you say the training provides (inaudible) what I am putting to you is that it doesn't necessarily have to be that way, and just as you talk about community safety, from my client's point of view that it's less safe when the police have guns, and you know that to be the case. And you've already said that in evidence today. So, using the Kumanjaya Walker case as an example - and bearing in mind the point that her Honour raised it as a question with you on the question of vehicles being nearby. Now, we understand - I am just putting this in context for people who haven't followed the whole inquest, that you can have a vehicle parked nearby which can store weapons (inaudible) rifles for instance. That's plain, isn't it?---The context, your Honour, which I provided, that was around long arms. In my expectation the long arm would be secured in the vehicle.

But the point is a police vehicle which pulls up outside a house in any Aboriginal community or anywhere in the Northern Territory, if it's not already - it can actually be fitted with appropriate storage facility for a lethal weapon such as a long arm and that's now the standard practice in the Territory when long arms are being - - -?
---Conveyed.

Correct?---That's my understanding, yes, your Honour.

And the point I am making for those who haven't followed all of the evidence, is that obviously the same can be done with pistols? The same storage can be utilised?
---I suspect they can, your Honour, they can secure in a vehicle, again - - -

I appreciate you don't want that to happen?---Well, it's against our current position, yes, your Honour.

So, bearing that in mind, and looking at the Kumanjaya Walker case, I want to test what we are saying against the idea that not only should have been - should the AR-15 have been stored in a vehicle - and I understand that's your clear evidence?
---Yes.

Putting aside the question of who is in control and what time events should have happened and so on, but accepting for the purpose of this discussion right now, the IRT went to the house at 7 o'clock in the evening or about then?---Yes.

And things unfolded as they again unfolded. Now, accepting that that's the factual scenario you would then say, "Well, if they were doing that and if they were there and if they were armed I would've expect the AR-15 would remain secured in the vehicle", follow?---Yes.

And you agree with that?---Yes.

And what I am now developing with you is that we are suggesting - and so too should the Glocks - follow?---I do follow but I don't accept that.

You don't have to keep saying you don't accept it - no-one for a moment is going to think that you accept that?---Okay, thank you.

Based on the fact that you've said it so clearly and - - -?---Thank you.

- - - (inaudible) documents and (inaudible). Follow? But what you have said in your evidence is effectively that when those men were there - the IRT was there, they had a five-man formation, three out and two in? And you said that it indicates that there was plan in place, it wasn't just a random thing, that they had structure and so on. That they knew someone was in the house and that tactics should have been varied but rather they did exactly what happened last time, in the axe incident a few days - that's the effect of what you've said. Now, if they - you've also said that if they were going to get him they should've got a local, and clearly the best course of action would have been to get a local person if not - probably a local police member?--- Well, that was the plan, your Honour.

Yes. And we all understand it, we're all in agreement about that, but I'm just giving you context. Now, can I suggest to you what would've happened next if not only was the AR-15 secured but also the Glocks were secured? So then you have a house - they'd searched one house so rather than searching one house - (inaudible) let's assume that they've got the target in the house and that's the point that they got to at house 511 and as you've said, they knew that there was someone in the house at 511. If the Glocks were in the vehicle and there were four IRT plus (inaudible) - but we'll just talk about the four IRT, if the Glock was in the vehicle what happens next? You'd agree that the strategy would have to have been firstly the concept of cordon and contain for the house, you agree with that?---Yes.

And what would necessarily have happened then, where of course there's no intelligence and no suggestion that Kumanjaya Walker is armed with a rifle or gun himself? Hello?---Yeah.

And there may have been, and it would have been a fair enough assumption, that he may have reached out and grabbed an edged weapon, because we know he's already done it once before?---Yeah, yep.

So, that's the scenario we're dealing with. What happens next is that they have to – the police have to engage in a strategy which requires cordon and contain, patience, negotiation, working with the ACPO or the ALO, whatever was available at the time, and perhaps working with Elders or family at the time. That would have had to have been the approach in a police setting. We think Kumanjaya Walker is in that house and we're here to arrest him. We're going to arrest him. We're not going away. Do you agree with all that?---It was a long statement. So again, your Honour - - -

Is there a part you disagree with?---Well, the bit that, just because they're not carrying guns, they wouldn't have gone in the door, they wouldn't have made some other actions that would have led to his apprehension. I would have thought the earlier advice about the axe incident would have alerted them that it was a higher potential and they would respond appropriately. All the other things, I agree with. We could have knocked on the door. We could have condoned and contained. I'm happy, I think that's what we're suggesting should have happened. They should have stuck to the plan. They should have gone at 5 o'clock in the morning.

But for the purpose of our discussion now, (inaudible), you were at the house at 7 o'clock, there are four policemen outside, and I'm suggesting to you that if you had not carried lethal weapons, this scenario would have necessarily unfolded in a different and better way. That is to say in exactly the way that it promoted so thoroughly and carefully in other parts of your evidence and in a general philosophy, the support for community policing, the support for using the other tools that are available, all of which are embedded in the way that you approach your work and that you want the Northern Territory Police Force to do their work.

THE CORONER: Mr Officer.

MR OFFICER: I'll let him finish. I object to part of the question, and it was a very long question, and I object to this part, in which he says, if they weren't carrying firearms at 7 o'clock at the time they entered the house, it all would have happened differently . That's just asking for rank speculation (inaudible).

THE CORONER: That's what he is asking for. He's not asking for rank speculation, he's asking for consideration of a variation in policy and how that might affect policing and police choices, options, the way they make decisions. I think that's what he's asking. I don't think it's rank speculation.

MR OFFICER: I certainly think question as framed has something different would have happened. It's calling for speculation.

THE CORONER: Well, it - - -

MR OFFICER: There are a number of possibly scenarios which I don't think will assist your Honour. It has been asked and answered by (inaudible).

THE CORONER: And this is the challenge to that statement. That's what's

happening here, Mr Officer. There's a different argument.

MR OFFICER: Two police officers might have been dead. That's the only possible answer that's (inaudible).

THE CORONER: That is a possible outcome, I suppose.

MR MCMAHON: And it's one – it's fair enough to put that point, and I'm not at all denying at all that we're talking about speculation, because the deputy commissioner and I are exploring a hypothesis which deals with his evidence that guns are necessary.

And just to be clear on that point about whether two police officers could have been killed, you recognise that as previous put to you that intelligence in preparation for that arrest in the scenario that we discussed includes an assessment that the target, Mr Walker, is not armed, and you accepted that.

THE CORONER: Is not armed with a firearm.

MR MCMAHON: Is not armed with a firearm?---I'm trying to be considered, your Honour, and reflect upon this incident and my lived experience. What I joined as a policeman, when I was in remote policing, we didn't carry firearms at all. So again, I've operated in an operating context where we didn't routine – we just didn't carry firearms. They were locked away in the police station. Now at those times, if we were confronted with the – the risk assessment probably would have been regarded that you do carry a firearm. But because we now routinely carry firearms, it doesn't enter that same threshold of what we would do. So if you knew in advance and you didn't carry firearms, and I suspect maybe a New Zealand police officer may give us some better context where they don't routinely carry – in this case, I suspect they would have routinely carried – or they would have carried them for that operation, because it was a heightened awareness. And again, that would be done dynamically. It would be done in the field. It wouldn't necessarily take the form of a written risk assessment, but you wouldn't routinely put yourself in harms way if you know you're got other options available to you, regardless of whether, when I was a young constable, we didn't carry guns at all. So, we had to arm ourselves with rubbish bin lids and other things that today, modern policing prevents. I think it's much more safer.

Just to finish on this topic, you've given two examples of where you don't carry – in your lived experience, arms were not carried. One was as an early constable?
---Yes.

And I assume that's in Western Australia?---Yes.

And just so we understand, when did that change, that you went from not carrying - - -?---Probably – we didn't start routinely carrying firearms until I suspect mid to late 80s, when it was more – like nightshift, you'd where a firearm. Other than that, you didn't carry a firearm during dayshift and afternoon shift and you worked on

your own. We didn't routinely arm until mid-80s, late 80s when I was a constable at Kununurra, '85/'86, we did not carry firearms.

The other example you gave was that you were talking about, even in the context of Northern Territory Police, you said, well they don't always carry firearms, and you were about to give some examples of when that might be the case when you might carry a firearm?---Again, I can't put my finger on that specific example. I thought the Lajamanu officers who we heard from, the two witnesses, that they don't carry firearms. Is that the evidence we heard?

THE CORONER: We did?---And I think when we made enquiries about this, they said "No, when we're operationally focussed to do stuff, we carry our firearms." But I think – I did hear some other context around if it was a prearranged visit to the school, if it was some other activity where they didn't think - and they'd done a risk assessment and they didn't think they needed it, and for sensitivity, they didn't do it. Now, that's a local discretion decision-making that I think happens routinely in the field that, as the Deputy Commissioner of Police, with all due respect, I can't paint a picture of every locality in the Northern Territory at any given moment in time that we would – police officers use discretion for a whole manner of things. Now, it's not for operational purpose. When we're out there on patrol, our expectation remains the same, that they are kitted up and ready to respond to anything that comes their way. And the carrying of firearms is one of the items we issue to them to enable them to do their role. So – I know it doesn't help probably, but - - -

MR MCMAHON: We'll leave that topic now. I think it's clear there are differences between my client's view and your view. The rest will be the subject of submissions. I turn to what would, in this context, be a minor point in terms of time, which is the question of racism. And I'm sure you appreciate that we are in no way interested in tarring everyone with the same brush in the Northern Territory Police Force. You understand that, don't you?---Yes.

And in fact, I'm sure you understand that from the point of view of my client, the Parumpara Committee, who represent Yuendumu, the ultimate objective of this inquest for my client, at least one of the key objectives is to ensure that the Northern Territory Police operates as best it can, so that people like my client's community and the Northern Territory Police can work and live harmoniously and with mutual respect and so forth. Do you understand that?---Yes.

But you also understand that your affidavit is evidence and will be the subject of submissions. And your third affidavit at par 59, and I want to give you a chance to change your evidence. Have you got - you've got all three of your affidavits? ---I have it in front of me, yes.

Okay. So par 59 says, "The Northern Territory Police Force accepts that there are several individuals among its membership who engage in racist" - etcetera, etcetera - "behaviour"?---Yes.

Now, I want to give you a chance to change that because by any normal use of the that language "several" a few, three or four or whatever amount, (inaudible) that and I want to suggest to you that that's just simply completely at odds with what we already know from the evidence in this case. I'm in no way suggesting that the Northern Territory Police, the majority or as an institution, et cetera, is standing around being racist but it's far more than just "several", isn't it?---I'm trying to form a word that may articulate something that satisfies you, Mr McMahon, around the number that we've heard - there's - I'm aware of other instances outside the scope of this inquest as well but we've - you've been involved with. So I do accept that there are several out of 1600 could be 10, I don't know what the issue with the terminology, "several". It was a language I've adopted - - -

Well, the issue is - my issue is that it suggests that an extremely low number of about three or four and I don't want to be tied down in that in submissions. That's so obviously wrong?---Okay. Well, again, the evidence before this court and what I know it's more than three or four. "Several" was the word I used. Numerous, I mean, I don't necessarily - I think - - -

That's all we need to do. I just need to make sure you aren't trying to stick to that point and I accept that (inaudible). We've had many conversations with several - - -?---Yeah, okay, I accept there's - again, I don't want to get in a fight over words, Mr McMahon.

I don't want you - and I don't want you to give a number. I just wanted you to accept that that's not a proposition you maintain?---Correct. And want - and the reinforcement of the message that we don't tolerate it and we are taking active steps to remove it from our culture and our force.

DR FRECKELTON: Your Honour, just so that the transcript reads correctly, I think it's clear that the deputy commissioner is not adopting the concern that our learned friend has that "several" means three or four. He's openly saying to you it's a number in excess of that. It's not prevalent but it's quite a number of instances, ten or so. It might be more but he's - it's a bit of a debate about the meaning of "several" I think.

THE CORONER: He used the words, ten, 30. He doesn't know. He used the word "numerous". But I think he's saying it's more than several but it's much, much, much less than the majority.

DR FRECKELTON: I take that. I don't think he was saying to your Honour that it's numerous people who have been racist. He was wrestling with trying to find a word - - -

THE WITNESS: An alternative.

DR FRECKELTON: - - - which catches more than three or four but less than many.

MR MCMAHON: I'm content with that, your Honour. And certainly, as you say in the following paragraph, "It is not the entire membership or even the majority"?
---Thank you. Yes.

Can I take you to the issue of the use of force by dogs within the Northern Territory Police Force and in this context you've referred to this issue in your third affidavit at par 151?---Yes.

And attached to your affidavit you've provided what's called "Use of force data review, Dog Operations Unit." That's MSO8, for the benefit of others. And I want you to consider a number of propositions which underly the question that I'm going to ask you to follow?---Yes.

And they are that the use of dogs in the Northern Territory - by dogs of course throughout this I'm talking about using police dogs to effect arrest and will be part of it?---And to assist in the arrest. I think that's the context.

Assist in the arrest. Thank you. The use of dogs in the Northern Territory is heavily weighed against Aboriginal people and because of that it's burdened with racial implications. And the reason I'm putting that proposition to you is from the data that you've provided that the use of dogs is overwhelmingly used against Aboriginal people. You follow? Do you follow that proposition?---I think that's recorded at par 161, is that what you're referring to?

I'm not referring to a particular paragraph at this moment. I'm just - but that's the data that I will be taking you to. Like, that's the proposition I want you to consider. The second proposition I want you to consider is that using dogs to attack or injure humans at all is an unacceptable use of force?---Well, your Honour, I object to the term "attack". I think the police dogs are trained to do a specific task. They're not trained to attack people. They're trained to track. They're trained to hold people so other members can arrive. I don't know that they would - - -

All right. Well, we'll use the word apprehend?---Please, yes.

Do you understand the word?---Thank you.

Do you understand the word apprehend has a particular meaning in this context which is the dog grabs the person?---Or may bite you, yes.

And so the proposition of putting to you that it's unacceptable to use dogs for that purpose except - and this is anticipating what you might say - except in an extreme example such as an active armed killer? I know there's been - that's occurred in the Territory?---Your Honour, I think the position of the Northern Territory Police Force is that they provide a valuable tool to our community and to police officers. They are designed to assist us and I don't agree with the proposition that we willy-nilly use them out there. They are a valuable resource, expensive to maintain, they're well trained and they provide, I think, an outstanding ability that probably that capability

removed from the police we would struggle in some instances. You know, particularly their skill at tracking. It's just amazing.

Well, to be clear these questions are not about tracking and finding people who are lost and so on. We're talking about - - -?---Well, not just lost.

- - - dogs apprehending humans which is grabbing them, holding them with their mouth and in some countries, for example, injuring them so they have to go to hospital. Do you understand that's what we're talking about?---I understand your proposition, Mr McMahon. I'm not, from the evidence that I've - been presented to me as the deputy commissioner have that same view. It's a very, very low number of animals that bite or receive injuries. When I talk about tracking from my information provided to me just because an animal tracks you, you flee from a stolen car, you've run from a burglary, you've run from a scene of a crime, doesn't necessarily mean that the animal will actually bite anybody. They use them to track, find out where they're hiding. There's opportunities then for police officers and the dog - to call people to surrender, come forward. It's not - it's not as just let the dog run free. That's not how they operate. I think that is hugely valuable tool for one of the core functions of policing, you know, identify in law enforcement.

The third proposition I want you to consider is that dogs should never, allowing for the fact that you might say that we need dogs for this reason, dogs should never be used against children and teenagers?---As a general principle I don't know that they - I would accept that as a high-level premise. I don't know they are routinely - obviously responding police, including those with dog handlers, when they respond to an incident may not know who the offenders are. So at times it's very difficult to make an assertion that it's going to be children.

In this case we know that they were used against a young Kumanjayi Walker who escaped from some youth detention centre. So as an example that was using dogs against someone known to be a young person. I think he was either 15 or 16?---I've heard evidence, your Honour, that he was - had been - yeah, but as I said, generically I don't know that our dog handlers routinely task the animals to target children. I don't think that's the case.

Well, that's not quite the proposition I'm putting to you?---Okay, thank you.

The proposition is that it's clear enough it seems that they are sometimes tasked to apprehend children?---I'd accept, your Honour, that may be the outcome but I don't, you know - as I said, police officers in responding to tasks, jobs, crimes, don't necessarily know the identity of who the offender would be and certainly the dog can't discriminate between an adult or a juvenile.

And you accept that in the Northern Territory of the people who are young people is approximately 100 per cent Aboriginal youth. Sometimes it's less. Sometimes it's 95 per cent. Do you accept that challenge?---Again I haven't got it in front of me but it sounds probably correct.

The number of people in prison, adult prison, male adult prison is around 85 or up to 90 per cent?---I would accept those figures at face value, yes.

So, that every strategy that – perhaps I shouldn't say every but most strategies employed by the Northern Territory Police Force including default strategies whatever they might be are predominantly employed against Aboriginal people? ---In an urban environment it might be somewhat different, Mr McMahon. But I suspect yes with a remote regional policing model predominantly policing Aboriginal communities.

You use an example of finding people who are hiding. So, to bring them back to this case and House 511 on the night of 9 November there was a dog there ready to do whatever it needed to do to apprehend Kumanjaya Walker. You know the reference?---Yes I do.

And so to put my proposition to you in the context in that situation if he had run off into the bush why not just let him go and you might in a day or so later release a dog to chase him and apprehend him?---Well, they didn't do that. That's the first thing. There was an opportunity though that again they could have apprehended him much more quickly. I think we have heard evidence in the inquest about the fatigue, the resourcing. You know, even if you've got a group of people from somewhere else in town the impact upon that from where they've come from. You know, every time we move one resource from one locality to another - - -

I'm sorry to interrupt you?---Sorry, did I miss the point?

Please don't get impatient with me. The point is that assuming and acknowledging all of those factors if Kumanjaya Walker had run off into the bush then the decision had been made to release the dog to chase him and apprehend him. I'm putting to you the proposition why not just let him go and pick him up later?---I think it was part of their operational plan I think was sound tactics. I have no issue with the fact that his apprehension at that point in time if they deployed it was appropriate. I'll bring back to the point though, the mere deployment of a dog doesn't mean he was going to bite him. The dog would have - - -

Can you say that again?---There mere deployment of the dog doesn't mean he was going to get bitten.

No, of course not?---No. The officers would have gone with a dog. You know, the dog would have barked. It would have done a whole run of commands to surrender. It would have assisted greatly with the apprehension usually in a nonviolent way.

So, it seems from your data, on the other hand what your data does show is roughly every month an Aboriginal person is apprehended and injured by a dog. That's what your data shows. I'll take you to the (inaudible) if you need. Now, perhaps the difference between this is saying whether that's acceptable or not. I'm putting to you that it's completely unacceptable and you're saying no (inaudible)?---I think it is our position, the Northern Territory Police position, they provide an extremely valuable

option for Northern Territory Police. There's no suggestion, if I can provide some context around it, it had police officers chase them, apprehended them, physically fought them, that there wouldn't have been injuries to the police officer and to the victim, to the offender that they've apprehended. So, again I don't know. I mean, you draw a parallel that the dog's bitten someone. I think there's an equal argument if they're fleeing from police and running away and don't want to get apprehended often my lived experience is the apprehension at the end is not necessarily as simple as giving up and people can get hurt unfortunately all of which hopefully are subject to use of force reporting, analysis, review.

All of that's no doubt correct, but the point that we're at odds with and which I won't labour too much more is that we're putting to you that the time has passed as a community where we say that it's acceptable to use dogs to chase down and apprehend people at all. And particularly so in the Northern Territory where, as your own data shows, the typical person to receive that treatment is going to be an Aboriginal person?---And again I think we're at odds. I think they're a valuable tool and I think we should and could and will continue to use them. If we can come up with better tactics, all those things that we've discussed about previously I think the Northern Territory Police Force is open to listening, open to look at best tactics. But they do provide a really, really valuable, I think, use of force option that is effective and generically speaking relatively safe when you've got people who may not want to be apprehended, may be violent.

Well, you've got alternatives already which it seems that there's not enough resources to use them widely, for instance drones to effect most of the examples that you've given if someone runs off, wherever they're hiding themselves. So, that's a strategic decision. It's an operational question of how much resources you had and so on. But you appreciate and accept don't you that drones are able to achieve most of the objectives if you're looking for a person who's run off an hiding?---Your Honour, we're actively trying to enhance the capability of the Northern Territory Police Force. I think I've made some comments already in that submissions we're making. I think they are a really valuable tool. I think into the future they will provide a much more valuable role but at the moment today, 2023, they're not routinely available for us to use and we are working on trying to close that gap as we speak.

In the data that is in MS8 and in your par 159 you refer to (inaudible) Your par 159 says, "In 2021 there were 14 incidents where injuries recorded." Do you see that?--- Yes.

Now, just to move things along quickly and if I'm wrong people can correct me but looking at the data that you've provided out of those 14, nine of those 14 were 24 years or younger. Do you accept that? We can go through it laboriously but that's what the data shows?---If you say so and I can't be - - -

If I've made a mistake that's so but - - -?---That's referred to in the data and the MS.

The data in table 2 provides a lot of information. What it shows, amongst other things, is that the nine of the 14 people who were injured in 2021 were 24 years or younger, follow?---I can accept that.

And of those nine, eight were Aboriginal and one was listed as unknown. So eight out of nine was Aboriginal men. So, eight out of the nine of the 14 injured in 2021. Do you follow?---Yes.

And some of them were down to the age as young as 13. One of them was 13 years old and one was 16 and so on up to the age of 24. Do you understand?---Yes.

So, what it's showing is that – and of the other, that's nine I'm saying are young, 24 and under. And out of the other five three were Aboriginal. So, 11 or 12 out of the 14 are Aboriginal who were hurt by dogs in 2021, follow? And I'm putting you to – so, that's about every four weeks in 2021 an Aboriginal person was attacked by a police dog in the way that you describe in your affidavit. I say attacked, sorry, apprehended and injured by a police dog. Follow?---Yes.

So, that's what that data shows. That's what your data shows. And what we're suggesting to you is that is, in itself that is completely unacceptable. And it's even more unacceptable when you look at the range of penalties to which these offenders, not all of them were offenders with some of them not penalised at all. But the range of penalties which most of them, and of course (inaudible) were light penalties such as fines or a few days gaol or no finding of guilty. Follow? That's about half of those young teenagers?---But I don't necessarily follow suit, your Honour, that the apprehension by the police and the outcome, how's that change the tactics that are employed by the apprehending people.

That's a good question and the point is it should precisely because the notion that we should dogs to track and apprehend people for offending when in fact often they're young and often the crime which they're thought to have done is so slight that they're only getting a light penalty. It shows a complete philosophical imbalance? ---Police officers, your Honour, are taught around the response at the scene. You know, we - subsequent to the apprehension they find out the age of the youth, for example. They didn't know that - you know, there's no evidence before me that they knew the age of whoever they were pursuing at the start, so how - - -

THE CORONER: Well that's - what we've got now are some statistics, so what is being asked is a reflection based on the statistical evidence. In each case a police officer may not know the age of the person that they are pursuing or seeking? ---Correct.

But statistically, we have learned through this analysis, that many of those people will be under the age of 24 years and many of them are being pursued for offences which are not of the most serious category and therefore the question is really being asked, to consider the proportionality in relation to the actions taken by police with the use of dogs and whether, in light of those statistics, that is a proportionate response - just in the same way that police considered how they apprehended

people with offences on the road and whether or not it was a proportional and appropriate response to pursue and there's been obviously a lot of changes around that?---Thank you, your Honour, I will try and regulate it a little bit. I think from reflection that's the injuries that we're talking about over those 21. I think there's some 5000 deployments, you know, so there's - on the converse side of that there's thousands of opportunities where no injury was done, where there was no apprehension and I suppose - and again, your Honour, I am not trying to be difficult, but again, in the resourcing environment that we operate in, primarily the function - one of the primary functions of police is that law enforcement investigate crimes that we get tasked to routinely.

So you would say that given the low number of injuries, the response is proportionate because it affects a number of positive outcomes without injury and it's a valuable resource for that?---Yes, your Honour.

And when you weigh it all up, proportionality suggests that in fact that it's a helpful resource that potentially that reduces injury and conflict?---Yes, your Honour.

MR MCMAHON: Thank you. (Inaudible) your Honour.

THE CORONER: I don't know if it's accurate. I'm not sure if that's exactly what you're saying, but - - -

MR MCMAHON: That's a very useful contribution, thank you very much.

DR FRECKELTON: The only thing we'd add to what your Honour said is that the - most of the injuries are minor - to fitting into the proportionality discussion, your Honour.

MR MCMAHON: Nevertheless, the proposition we are putting to you (inaudible) is that in a context where, with so many other steps that you're taking positive steps of reform, we are putting to you that the use of dogs against people, where people overwhelmingly in this part of the world means Aboriginal people, so that's what's happening with the use of dogs, from your own example, is something which is unacceptable and its philosophical approach should change. You're saying (inaudible) - well I (inaudible) but that's the - you understand that's the debate I have?---Yes, correct and again, I think, if I go back to the data - I haven't got in front of me but that's my reflection on reading it, that most of those are not at remote locations anyway. So most of them are used within an urban environment, it's either in Alice Springs or Darwin, so they're not - I don't think, routinely deployed to remote localities and I think we heard evidence from Sergeant Donaldson that the dog, even in this instance, was left in the car. There was a number of factors that considered the use of it and I think the IRT had deployed numerous times without it, so I'm - you know, I accept the proposition you've put and the explanations we've provided but I don't think they're routinely deployed to remote communities. Which may put some balance back into the context of Yuendumu and other locations.

Well, it's a helpful comment but of course what we're dealing with here is what did happen at Yuendumu and also dealing with your evidence because in your material that is clearer that you'd said today that you want this strategy of policing to grow? ---I do.

And we are saying it's an unacceptable cost in terms of the trust between police and the Aboriginal community that the - the presence of dogs and the way that they work, as other witnesses have said, such as Assistance Commissioner Wurst and Superintendent Nobbs - I think it was Nobbs - the idea is to instil fear and apprehension and that that approach to policing, coupled with your data which shows that the injuries which - some of them are only trivial physically but that takes no account of psychological harm and trauma to the person that is apprehended violently - it's an unacceptable cost?---Again, your Honour, I've tried to explain that as best I can. I think it's part of our - and - - -

I understand?---And ultimately, you know, I think, with everything we're talking about here, is that ability to build a bridge back into any community. I think there are conversations that we can have around perhaps when those risk assessments we've talked about - if there's a true need to deploy, you know, if it's there, well then I'm not one to remove that option experienced police officers to make sound decisions. It actually may result in less injuries. They provide a - you know - anyway, I think they provide an alternative and I think that - by continuing of our listening and that may affect this data - I'm - - -

And my final proposition on this issue before we move on is that despite the answers you've given, that we suggest to you that the use of dogs which generates fear and apprehension of which we discussed, is in fact the antithesis of some of the other ideas that you've given evidence about for reform and it breaks down trust and it creates hostility between the subject - the population subject to the use of dogs and the police force?---Again, I think I've tried to be as articulate as I can about what I think the future will hold for us and, you know, we're on the start of this journey, you know, we're three years in now, we've got a long way to go but I think the better we get, the more information, the more informed, the better relationship we form in community, it will perhaps alter our tactical planning on the ground when we've got other alternatives - - -

Well, I think that's as far as we can go on that?---That's our intent.

Can I take you to another topic now, which is training and recruitment?---Yes.

And your evidence on CREC, the Community Resilience and - this is not a topic issue, I am not taking you to any part - - -?---Okay, thank you.

It's just a conceptual point?---Yes.

And it's in support not only of the reforms that you've been part of but suggesting that in terms of training and recruitment you can take some significant, valued or much bigger steps than what I have asked other witnesses (inaudible) here?---Yes.

Because of your role as Deputy Commissioner?---Yes.

And effectively the informant in this case?---Yes. Okay.

(Inaudible). You've described what CREC does and how valuable it is and it does obviously show the executive's commitment to reform and change?

---Yes.

And built in to what you said, necessarily is how that reform and change is connected to the (inaudible)?---Yes.

And what I want to suggest to you, which I suggested to a couple of other witnesses from the police college - is that in terms of education of people in training to be probation constables, that it would be of great benefit to take a much deeper dive into education about the Aboriginal population of the Northern Territory at the training college and I put it into perhaps six or seven weeks as opposed to six or seven days in terms of training, and I said to another witness - unfortunately it could be Allen but I may have forgotten his name?---Sergeant Allen, yes.

Might have been Sergeant Allen?---Now Senior Sergeant at the CREC.

That if you spend weeks focusing on Aboriginal (inaudible) your police force could become the gold standard for such training. And I'm suggesting that it would be a great way to attract a larger number of high-quality recruits. It would probably weed out people who were put off by such an educational program in itself. And over time it would have the effect of doing the things that you're trying to do right now which would lead to a very significant cultural shift in the police force in the Northern Territory. Do you want to comment on that?---Your Honour, I think in its philosophy we're on the same page.

We're on the same page but what I'm suggesting to you is, and really what I'm suggesting to you in each of these points, is that although the reform process in some of these areas is clearly on the right page, in the right direction from the point of my client. Nevertheless it's just too tentative a step and what we need to do is consider as part of how your police will deal with my client in the future is a process of education which is far greater and deeper than you what you previously concede where you study. Your recruits study Aboriginal history, Aboriginal law, bush tucker, culture, art, religion and so on in a way which makes them fantastically trained in those things from the point of view of the community and the police?---So, again, thank you. I think the pathway runs evolutionary, your Honour. We've commenced the process. Recruits undertake seven months training now. Seven months is significant in what's a very, very tight operating environment as we've heard. There are 3000 additional police for Queensland; 3000 additional police recruiting, I think, in Victoria; we've got WA wanting 950 cops. They're shopping at the moment to pick which is the jurisdiction that they would like to work for. We are very keen to ensure that it's us, that we attract the best people. We bring people into this operating context. And again the programs that are already undertaken by CREC start then on

that journey because it's a lifetime journey for a Northern Territory police officer. It's not just something you're going to do in seven weeks. You're going to live here, you know, in our model we want you to live here and protect and serve the Northern Territory for your whole life. We make the comment at many conversations with recruits and others. You know, it says on our shoulder flash we're the Northern Territory Police Force. We're not the Darwin Police Force. We're not the Alice Springs Police Force. We need to provide police, quality policing services right across the territory. And a condition of employment taken since 2020 has been that every single recruit that joins the Northern Territory Police must serve. Is deployed out of Darwin. Nobody goes to Darwin and they must serve remote regional within six years of commencement of their service. So, it's a condition of employment to try and shift our thinking that we want you to be out there gaining as much experience as you can right across the territory. So, I think all of those things combined will hopefully give us, and I don't have any objection to the suggestion that you make, that over time we have specific courses that will capture that. But, again, I have, you know, I bring us back. I've heard some amazing stories about what we are doing out there and we're trying to build on that. I think we've got the platform. It's going to take time.

Just to conclude on that point, and I didn't even know until now your point about contracting employment includes police within six years which sounds excellent. The fine point to make is we are urging this because accepting, as you say, that it's a lifetime journey every step of that lifetime journey, especially those first few years which are probably the hardest in some ways if someone learns how to be a good police officer, will be greatly enriched and be more effective if the police officers (inaudible) have a far greater in depth training and understanding of Aboriginal culture (inaudible)?---Agree.

I've got one large topic to go, your Honour, which I'm suggesting lunchtime. That might be useful. I might be able to trim it down over lunch. It's up to you, your Honour.

THE CORONER: Do you think you can finish by 1 o'clock?

MR MCMAHON: Yes.

THE CORONER: Then I'll sit.

MR MCMAHON: The final question or concept that I wish to discuss with you, ask you questions about, is the militarisation of the Northern Territory Police Force. And just to set up some concepts where militarisation can occur. Whether (inaudible) I understand we've had a discussion on that but militarisation can occur both by philosophical choices that are made but also perhaps (inaudible) by the recruitment and detention of a large number of military personnel in your organisation such as (inaudible) Would you accept that?---I think in my affidavit and from my, your Honour, my previous discussions I don't broadly accept that in my thinking and what we're trying to achieve. So, even with the employment data from the ADF I think there's significant difference in training standards between a sailor and an

airman and a combat infantryman. And, you know, to broadly clump them all into the same bucket I think is very unhelpful for me.

Can I give you (inaudible)?---Thank you.

To point out the differences my client's perspective and your perspective but we're just talking about categories and philosophy?---Thank you.

You've used, in your statements you say that word militarisation is a pejorative term. And just to be clear my questions to you and for those watching we're not suggesting that there aren't plenty of people on the Australian Defence or Force or ex ADF who are now in the Northern Territory Police Force who aren't doing an excellent job. That's not an issue. Right?---Yes.

But in terms of militarisation just so that we can have an agreed position like me for the purpose of my questions can I suggest to you the word and definition. I don't want to tie you down to each word that militarisation involves the adoption of the integration of military approaches and military policy in the way an organisation works. Okay?---Yes.

It's a pretty neutral definition. Are you happy with that?---Yes.

It can include things like weapons and uniforms which are external indicia but also things like operation and culture, how you do things on the ground. And this is all obvious isn't it and an example of that which I'll come back to in a few minutes would in fact be the events of 9/11 in Yuendumu which we would be suggesting to you is an example of militarisation in terms of how the event unfolded. And it had the whole look of a military operation around the house and what happened in that half an hour. You don't have to agree with but that's where we're going?---Thank you. I don't agree, yep.

And you've heard in this inquest me asking numerous witnesses about military language which is has now crept in to the Northern Territory Police Force language. You've heard that evidence?---I've taken from what ...(inaudible)... House, that language?

Things like (inaudible) House, have an extraction moves and even witnesses that said (inaudible) yes extraction from Yuendumu. Were talking about a mission (inaudible). So, really turning the military terminology into the Northern Territory Police?---Senior executive and I've never used the term force multiply.

THE CORONER: I used it?---I was intrigued when I heard it. I have heard it used it elsewhere from the military but not from a policing context and for the record I've never served in the ADF.

MR MCMAHON: Sure, but at least one (inaudible)?---Okay.

But the point is that there are multiple uses of military language which has become part of the military policing “we’re here to grab up Kumanjaya Walker” is military rather policing?---No I’m not sure about that. Grab up was more, I thought, a colloquial slang or something, that he was going to - - -

You’ve heard talk about green roles and black roles? Have you heard that talk in the inquest?---Your Honour - can you refer me - - -

(Inaudible)?---Okay. Again, I think that referred to the - what type of uniform they’d wear. Were they wearing camouflage? Were they wearing their blues?

No, the green roles doing - I mean, it does include the uniform but it also includes - - -?---Surveillance tactics compared to something, yes.

Surveillance in country, creeping towards target?---Okay.

Can you - fairly classic military type operation and the black role is to deal with urban or building environment where you’re storming or securing - - -?---I suspect, your Honour - and again, I’ve not been a soldier or not been a tactical operator of the TRG, but again I do know from my experience that we do use TRG terminology, again as the basics. So there’s inter-operability that when they hand over, if it was a major event and the specialists turn up they’re all using the same terminology so know what they’re talking about is a tactic so you’re not confusing, you know, go to the front of the house, they use colours, as you know. They’d - there’s specific things that we - they’re taught to do so to minimise the inter-operability confusion in a critical incident. So, again, the things you talk about, I’m not quite sure that they are military terms. I know they’re police terms but I don’t know what they’re military terms.

All right. Well, the transcript is there for - - -?---Okay, thank you. Sorry.

In terms of the TRG, for instance, do you accept that it’s fair enough to describe that as a military type or paramilitary type organisation?---Well, it’s a structured police unit that has got a very, very tight role to perform in the Northern Territory. One of those functions our police tactical group which is a requirement under the national auspices of the Australia and New Zealand Counter Terrorism Committee and a requirement by every police force. But they’re a very unique unit. They’re very specialised.

I accept that. But in nature much more military than any other part of the Northern Territory Police?---I can see how the public can see that, yes. The vehicles they drive are, you know, rescue vehicles and armoured vehicle that allows them to get close if there’s people been injured or shot, without being injured, things like that. Albeit they’re not tanks.

But it’s an example, isn’t it?---I accept that people may perceive it that way, yes.

And the elite nature, the excellence of their training and the type of thing they're trained for is in fact very similar to parts of the roles of the SAS, isn't it?---Well, again, I think we're getting into a zone that I - I don't believe I think the SAS have really a very specific role in the defence of Australia in a military context that certainly the TRG is nothing like them. We would only use, under the counter terrorism arrangement, we only call upon a tactical group from the military when it's beyond the capability of police and there's yet to be an incident that I'm aware of in Australia where we've ever got to that point. So it may - you know, I understand from outside of looking in they draw that conclusion but from what I know and what I've seen and what I've experienced there's a vast difference. And the only time you would use the military is when it's beyond the capability and capacity of a jurisdiction and has yet to meet that threshold.

I'm not suggesting that we're going to call in the SAS. I'm just putting a series of what I suggest (inaudible) controversial ideas that the TRG has a military look about it, has a military feel about it, you've referred to vehicles, (inaudible) referred to weapons, training and so on, and their operability looks like more military than police. Now, it seems that's - if I may say so, fairly obvious, not all day every day?---Okay. They very rarely deploy into high-risk role and, in fact, the vision I've just seen recently they didn't have - they didn't have military clothing on at all, your Honour. They were wearing covert clothing.

In terms of recognising the potential effect of having ex-ADF people in these, there are - you do now have, as I understand it, a special training module that - - -?---We're trying to get a working group together, your Honour. We've got a group of well-versed experienced police officers that we know have got ADF backgrounds to try and help us explore this exact topic more deeply so we can provide appropriate support I think. Because it's very clear to me at least in my mind the training that's delivered for police is fundamentally different than the training that's provided to a soldier.

That's the fundamental issue that we have to grapple. We're suggesting that the Northern Territory Police Force needs to use to be far more upfront about the problems that can emerge from militarisation. And I'm going to put to you some propositions about militarisation?---Please.

And I'm just putting that to you right now that in fact it's a question of degree between us because you've already accepted that the Northern Territory Police Force are looking for training modules for ex-ADF which tells us something about you're thinking about ex-ADF, doesn't it?---Yeah, it - to address this issue. And I think when we say a training module, I don't know that it's necessarily going to be a formalised training module. I think it's going to be some ability for us to support ADF members because I think they provide a valuable - and I've said that in evidence, I don't accept that they are not valuable for the Northern Territory Police or any police force. You know, some of the positive skills they bring outweigh the risk to some of the other things that you've identified. You know, training - anyway, well, I mentioned that previously. So I think it's not just we're trying to exclusively come up with a training module that's going to demilitarise a soldier. It's around a much more

open negotiated effect and try and find out from those good police officers that we are - that are ex-ADF, are there any issues that they've found? What do we see here? Is there anything you can suggest? You know, so it's an ongoing process.

We accept that. But what we're also going to be putting to you is that there's a degree of militarisation which is very worrying from what the evidence has revealed and that the NTPF is trying to grapple with it, that there needs to be a great deal more. Do you understand? For instance, using your own affidavits, in your third affidavit - and I'm not going to take you to these paragraphs but for the benefit of others, par 469, you explain that you can't monitor ex-ADF for that reason alone because they're ex-ADF and (inaudible) use of force because it's discriminatory. Okay? So you said that as a basic proposition. On the other hand, in the same affidavit, you - and in your evidence just now, you recognised the need for extra training modules for ex-ADF?---Awareness sessions perhaps as opposed to training models.

(Inaudible)?---Yep.

Sorry, (inaudible)?---Thank you.

In your first affidavit you say the new module at 236 is to assist in the de-culturation of ex-ADF personnel. You follow?---Yes, I do.

So to some extent you're recognising those problems that there should be de-culturation of ex-ADF personnel and that some training is going to be needed to do that?---I agree. But we are taking steps to address that, yes.

And implicit in that is because - and I appreciate what you say about someone who's an aircraft mechanic or working in a ship in some way is different from a soldier in the field and the training they had. So we're focused on army when we're talking about ex-ADF. But implicit in what you've already recognised in your own statements is that soldiers by their training, and there's no criticism of this, we as a nation have made a decision, forever as a nation since 1900, that we should have a defence force and they are trained to go and kill people when they're ordered to do so. And to that extent their training is tough and the reality is that it dehumanises them to the point - and this is a carefully structured point that the army works on, to the point that they are able to go and kill people when most of us would recoil from that. So that's the nature of their training. That's all pretty obvious, isn't it?---I accept your proposition at a high level. I don't know what training they do as a general principle.

You don't need to know?---They're soldiers. They go and do what soldiers do.

You know they're training to kill, you're not disputing that?---I think it's broader than that though.

Of course it's broader than that. They're trained to do many other things, build bridges when there are floods in the bush. But they are also trained to kill and that's

why you as a police force are already accepting the fact that you need to de-culturate men from that kind of training?---And other aspects of - perhaps of their culture that it may not sit nicely or evenly with the Northern Territory Police Force. But not that - just that principle.

Of course (inaudible) with that, just (inaudible) on a critical issue, the critical issue which I'm putting to you is that that's what it's about, the difference between what soldiers do in their training and what you need to do is serving the community in community policing. You have to identify that difference, which - - -?---Our training clearly delineates that now. You know, they're taught to do things as a Northern Territory police officer. And that may be contrary to whatever other training they've received. Our expectation is they comply with our training, our instructions and comply with what they're taught to do. And by and large, as I understand it, works quite effectively. As I said, we've got some really good - - -

But the difference really, Deputy Commissioner, is one of a degree and I'll come - I'm going to take you to the Kumanjaya Walker incident and then - - -?---Yep.

- - - some of the (inaudible) material which you've obviously considered carefully. We've put to a number of witnesses, and I'm suggesting to you, so you have a chance to comment on it, that what happened on the 9th of the 11th is an example of how militarisation can affect police work. To give you some examples, and putting aside the whole question of the breakdown between Sergeant Frost and the IRT members, when they get to the house, there - we suggest that the manner of handling Kumanjaya Walker in the house was confrontational and aggressive and not what you would describe as good policing?---I'm still grappling, sorry. I'm with you first premise that an example of militarisation. I don't accept that either.

No, but I'm just going to give you a series of - - -?---Okay.

- - - (inaudible)?---Well, but I think if you gloss over the first bit, the second bit doesn't hold suit to me.

(inaudible)?---Okay.

The use of the longarm for policing?---Outside of what I would have thought was necessary, yes, we've discussed. We've apologised. I think there was a lack of direction.

THE CORONER: I don't think you're being asked to respond to each of these. I don't know, Mr McMahon, I thought you were just going to list a number of things which you say are examples of militarisation, or do you want to response to each item?

MR MCMAHON: No, I'm just saying - - -?---Okay, well I'll listen, your Honour.

THE CORONER: So just list your items and then - - -?---Sorry, sorry, your Honour.

- - - ask a question.

MR MCMAHON: So suggesting a number of factors such as the way that the IRT men moved around the house, some of them jumping fences, carrying the AR-15, when you would say and others have said that they don't need to be carrying an AR-15. The way that they handled, physically handled, Kumanjaya Walker. The combination of those factors is an example of what we would put to you as paramilitary feel rather than a policing feel, when they're actually carrying out the operation?---Well, I didn't see it in those lights. In my view, your Honour, I think they were operating as common-sense policing and assumed there was a plan. I would have thought if you were an ex-trained soldiers, who are trained to a high level in tactical planning and tactics, we would have seen something different to what we saw. I saw police officers operating as police officers would. You know, even if there's no formal plan, you don't all walk in the front door of a house, you would expect common-sense to have someone say, well someone's got to go to the back. I don't know that that's a military experience, but my experience as a police officer, that level of two to the front, two to the back, I've never been a soldier. That was ingrained in our dynamic nature when you respond any task, go and do this, do that, cover exits, look at points, protect yourself. Lots of things. I don't know that – so some of that military training and what police training may be mutually supportive, but I didn't see it as a military style - - -

All right.

DR FRECKELTON: Your Honour, with respect, there does seem to be a bit of a breakdown between what our learned friend is wanting to raise, because it's been put in a multipart preliminary, and what the witness is now answering, it might be helpful if the component is put explicitly as an incident of militarisation. The witness might be able to give a nonresponsive answer?---Sorry, Mr McMahon, I might be a bit confused.

MR MCMAHON: No, that's all right. And with respect to Mr Freckelton – Dr Freckelton, I'm not going to do that now, because of the – I think the witness' position is clear based on what I put to him and I understand the difference between our perspective and his perspective and I don't need to draw on it.

In your final affidavit, you – and possibly all of your affidavits, you deal with some of the work of – and I'm afraid I don't know the rank of Proctor, what was his rank? ---Commander.

Commander Proctor. And can I take you – perhaps this can be put up on the screen, I think this one's organised, at page 139 of Proctor's large report, the coronial investigation report, is that one of the ones that was organised? I'm in page 139 of the Proctor report?

THE CORONER: No?---Oh, thank you.

MR MCMAHON: Is that Proctor?

THE CORONER: No. The second one, not - you just clicked on the top, yep. No, that's the Kunene (?), the other one. Yes, the coronial memo, yes. I think it will be that one, yes. What page was it?

MR MCMAHON: 139.

Do you see that? It's a bit hard to read, I think?---Yep, I can see it.

Okay. So the point I'm taking you to, I just want – just because, in your affidavit, you dealt at some length with some of the propositions that Commander Proctor's dealt with?---Yep.

And I want to take you to one particular line in that graph at the top – table at the top of the page. You will see that it's a table that deals with accoutrement issues across use of force incidents?---Yep.

And in your affidavit at 216, you refer to this and at 220, you find a number of witness in the data analysis?---Yes.

This is your third affidavit?---Yep.

And I'm not going to debate those with you. The point is, if you look at the line which says "Ex-defence", which is about five lines down. You'll see the first line "Rolfe" and it's got a number of incidents?---Yeah.

And you go down three or four lines and see "Ex-defence". Can you see that?---Yes.

And I just want to give you a chance to comment on this. I know that at par 220, you say there are problems with this analysis because the various factors are not taken into account, that the broad data that's extracted is that, in terms of the right-hand column, "Firearm usage and presentation" with the exception of the column involving the individual, Constable Rolfe. It's the ex-defence personnel have the highest presentation of firearms. Do you see that?---Yes.

And pretty much, that's the point that I'm going to take you to. So - - -?---Again, your Honour, if I can be reflected back to my earlier evidence and the affidavit, I think I tried to give some clarity around, I think, the intent on the analysis of the data provided by Commander Procter on – has been the subject of much further delving and diving by the Northern Territory Police Force to try and validate and otherwise around the data, and it didn't lead us to any significant conclusions that identified that the ADF were any more likely to use force than any other member, bearing in mind they - - -

THE CORONER: That's a different point. It's not on the use of force generally, it's on the use of firearms that you're being directed to here?---Again, your Honour, without further analysis and give me some time to contemplate those data in my earlier report, I accept what the Proctor report showed and again, I will have to refer

back. It will take me time to have a bit of a dive around in my toolbox here to find it so I can give you further clarity. I'm happy to take that away and if – but I accept that the data they had there - - -

THE CORONER: Dr Freckelton might be able to help you out later, you don't have to, I don't think, grapple with it now. I mean, this data speaks for itself but you say this data, on further review, may not have been able to be replicated but I am sure Dr Freckelton might be able to clarify that?---And I'm not - yes, thank you, your Honour, I'm just not sure it provides the same reflective piece as what it shows in that first draft. So I will take that away.

MR McMAHON: Sure, and I'm trying to be fair here and your paragraph 220, you or you researchers have set out for you a number of problems with the data?---Yes.

(Inaudible) you've said that - and I accept that there can be problems with any of the data in the (inaudible) report or any of the data in your affidavit?---Yes.

I'm talking the data is not but (inaudible) that it provides a useful guide for further reflection, as you've pointed out. (Inaudible) is that there is a high use of firearm usage present in that data, which is, as has clearly been the case, the cause of generated further analysis and reflection within the Northern Territory Police Force.

Your Honour, I know that Dr Freckelton will have questions and I have got just a couple (inaudible) to go.

THE CORONER: I think we have to break.

MR McMAHON: All right, we will break.

THE CORONER: And have our lunch adjournment. But again, given our tight schedule, I need to be back at quarter to 2:00.

WITNESS WITHDREW

LUNCHEON ADJOURNMENT

RESUMED

MURRAY SMALPAGE:

XXN BY MR MCMAHON:

MR MCMAHON: Shall I commence, your Honour?

THE CORONER: Just one moment. We're ready, Mr McMahon.

MR MCMAHON: Deputy, I'm going to finish on all of my questions for you and I think it's clear. I'm sure you'll agree to the different positions that our client's taken and you're taking on this question. But it's a matter of tenderness I'm putting to you that the perception could hold the presence in the use of ex-ADF in Yuendumu is a very serious (inaudible). and that's because of ex-ADF involvement in the incident on 9/11. Do you understand that?---I understand that, yes.

And we appreciate that that perception is genuine?---Well, it's genuine to the affected people, yes.

And that ongoing perception which does damage trust between the community and the Northern Territory Police Force. That's the position I'm putting to you on the stand?---I acknowledge that that's the perception they have.

So, in conclusion, I just want to give you a chance to comment on this, what we'll be putting to her Honour and effectively towards creeping militarisation needs to be addressed. I appreciate that you haven't accepted that there is such creeping militarisation but that's according to you and that needs to be addressed in order to prevent. If one of the strategies to prevent the reoccurrence of what's happened on 9/11 and to rebuild trust between community and the police. Do you just want to comment on that? Or do you - - -?---Your Honour, I think I - and - I think I have commented quite extensively. The uniform we wear doesn't have anything that indicates you're an ADF member on it unless you can read a medal or something like that. I think for community members when they're introduced to police - or anyone that's interacting with a police officer, you wouldn't know, I don't think, that you're dealing with an ADF member as opposed to an ex-police officer from another jurisdiction, a fireman, a butcher or - you know, the variety of people that we recruit - an academic. It is really important that I think we focus on the standards and the governance and what we accept from our membership and from the police force and I think that part, if we're vigilant and we maintain the stance that we have, we'll identify those issues through early intervention programs and other things such as that, so that there is an escalation of behaviour that may be of risk, we'd identify it - regardless of where their previous training or exposure had come from.

If your Honour pleases.

THE CORONER: Thank you. Any other questions? Ms Ozolins?

MS OZOLINS: I'm sorry, your Honour, I was expecting Mr Officer to jump up.

XXN BY MS OZOLINS:

MS OZOLINS: Deputy Commissioner, as you know, I appear for the Northern Territory Police Association. I just wanted to ask you some questions starting with the people strategy that a lot of your evidence has been based around and most of my questions will focus on the part of the people strategy that - sorry, if the Project 20/30 which focuses on the people component. So just so I'm not - so I'm starting off on the right foot, you were - you commenced with the Northern Territory Police Force in February 2020 and engaged to fill the role of Deputy Commissioner, People Crime and Capability?---Correct.

And at that time, underneath you in the org structure, you had Assistant Commission Nick Anticich and relevant for the inquest purposes, then Commander Martin Dole answer to Assistant Commissioner Anticich, who answered to you?---Yes.

And under a separate stream and relevant to these proceeding there was then Commander Bruce Porter who answered to Assistant Commissioner Michael White who answered to you?---Yes.

And you answered to the Commissioner who, at least at 9 November 2019 was Mr Murphy?---He was - he was acting Commissioner as I understand it, yes.

Yes, and upon the appointment of the current Commissioner, Mr Murphy resumed the role as deputy Commissioner of a different stream of - -?---Operations and road policing, yes.

Yes. Now, obviously you and Mr Murphy report directly to the Commissioner?---Correct.

And I think you confirmed earlier in your evidence that you're here at this inquest, speaking on behalf of the Commissioner and the view you express are those of the Northern Territory Police Force?---Yes.

So since November 2019 some of the senior officers have left and we know that Mr Porter, Mr Dole and Mr Wurst have all been promoted to Assistant Commissioner?---Correct.

And since your appointment at least, the Commissioner of police has signed an instrument which intends to delegate all of his powers and functions under the Police Administration Act, initially it was to either of the Deputy Commissioners, wasn't it?---I believe that to be correct, your Honour yes.

Well, certainly in August 2022 a new instrument was issued which now provided that the Commission ad delegated all of his functions and powers under the Police Administration Act to anyone holding the rank of Assistant Commissioner?---I believe that's correct.

So an Assistant Commissioner across the organisation can exercise any function or power which is given to the Commissioner of police by the legislative regime?---My understanding of it, your Honour, that relates to - specifically around provisions of Part 4 and Part 5 of the *Police Administration Act* specifically, but I think that it would delegate broader powers in that perhaps, yes, it may.

Well, in fact the instrument signed off in August 2022, intended to delegate all powers and functions, does it not?---I haven't got a copy of the instrument in front of me. If that's what it says.

I am happy to show you that. Would you take it from me that on 15 August 2022 - - -

THE CORONER: Why don't you just show it to him.

DR DWYER: And everybody else as well, your Honour, just so we can follow the evidence.

MS OZOLINS: I only have the one paper copy. I didn't appreciate it was going to be an issue.

THE CORONER: It's not part of our brief, is it?

DR DWYER: No.

MS OZOLINS: No, and I assumed it would be treated as a legislative provision or similar. I didn't think it was going to be an issue.

DR DWYER: Well, could my learned friend said where might find it, on line, if that is the case?

MS OZOLINS: I'm not sure if it's available on line.

DR DWYER: Are you asking - sorry, is my learned friend asking that my solicitor, Ms Walz, scan that and make it available so that we can follow the evidence?

MS OZOLINS: I am simply asking the Deputy Commissioner to confirm that on 15 August 2022 the Commissioner of Police signed a document which purported to delegate all functions and powers under the Police Administration Act to Assistant Commissioners?---That's what it purports to show, that is as I interpret it, your Honour.

THE CORONER: Yes.

DR FRECKELTON: Can I see that please?

DR DWYER: And so that the evidence then makes sense, as to what document the witness was shown, I'll get a copy of it and ask that it be marked for identification.

DR FRECKELTON: I've not seen this before, your Honour, but I do see that it refers to a particular power specified in a column of the schedule, so it's - - -

THE CORONER: Is the schedule there as well?

DR FRECKELTON: No.

THE CORONER: Right. So maybe we need that and the schedule and we can mark it for identification.

MS OZOLINS: Well, I am happy for the document to be produced, as my learned friend has pointed out, it is a police document. Your Honour, the schedule - - -

DR DWYER: Sorry, I just need to stop. When my learned friend asks questions, the rest of us at the Bar table and particularly your Honour, as your Honour's inquest, need to be able to follow the evidence - and that's a good example that Dr Freckelton just pointed out, putting to a witness a document that he has never seen before, without the attached schedule means that any evidence he gives in relation to that, has the risk of being misleading and also being unfair. So can I just ask that any document that is going to be put to this witness be made available to counsel assisting before that so that we can make it available to parties if necessary put it on the overhead?

THE CORONER: So just in relation to that document, at some point - - -

MS OZOLINS: Your Honour, can I - can I just clarify something? My question was, has the Commissioner delegated power, that was the question.

THE CORONER: But this - but - - -

MS OZOLINS: And the Deputy Commissioner has - - -

THE CORONER: - - -But it was a specific range of powers that you were suggesting.

MS OZOLINS: Everything.

THE CORONER: Yes.

MS OZOLINS: The schedule to which Dr Freckelton replies is not relevant to the question that I asked nor is it relevant to the document which the witness has now seen.

THE CORONER: Well, I don't know because I haven't seen the document or the schedule so I accept that it's your submission that it's not relevant but other people might have a different view, I don't know. So, we need the complete document.

MS OZOLINS: I will then - I call for it, your Honour, from the Northern Territory Police Force. It's a document which governs their operation.

THE CORONER: Well, you have part of the document.

MS OZOLINS: I do have part of the document.

THE CORONER: Do you have the rest of it?

MS OZOLINS: I don't have the schedule with me, your Honour.

THE CORONER: Do you know where you found it or where you accessed this information?

MS OZOLINS: It's on the Police Intranet I am told, your Honour.

THE CORONER: Okay.

DR FRECKELTON: But we also (inaudible) your Honour.

THE CORONER: All right.

MS OZOLINS: So, Deputy Commissioner, do you accept that under s 14(3) of the *Police Administration Act* with reference to s 48A of the *Interpretation Act 1978*, the Commissioner of Police delegated to a member of the Northern Territory Police Force from time to time holding, acting in or performing the duties of Assistant Commissioner of Police all powers and functions conferred or imposed upon him by the Act?---Your Honour, I - the first I've seen that document. I've just quickly scanned it. I don't feel I am comfortable in a position to answer that question in any degree of accuracy

THE CORONER: Are you able to answer it without - for example without reference to the act?---Again, your Honour, without - I've no reason to disbelieve Ms Ozolins is telling me something that's not true, routinely documents are not sent to me that are signed off by the Commissioner as an order course of business. I may be briefed they exist, but I don't necessarily sight every one of those documents or have a folder or - but I accept that if that's - - -

MS OZOLINS: Perhaps I'll leave that aside and ask a different question, your Honour. You regularly exercise delegated functions of the - or delegated powers of the Commissioner?---From time to time, yes.

And how do you familiarise yourself with the matters which are delegated to you?
---I familiarise myself through a process through our - usually our police legal team.

So, you don't actually look at or consider any documents which empower you to take action in the name of the Commissioner?---Well, that's not correct. I do review documents if they relate to me making a decision based upon a delegated power.

I would read the completeness of that document or file or whatever decision they're asking through that process for me to make and I would review those paperwork and those documents. It may or may not have an attachment of a delegation attached to it.

And are you suggesting that you have exercised documents in the name of the Commissioner without reviewing the instrument of delegation?

DR FRECKELTON: I object to this line of questioning, your Honour. Unless my learned friend clarifies to you what this has to do with the death of Kumanjayi Walker, this interesting excursive into delegation paths under the *Police Administration Act* and have no relevance.

THE CORONER: Yes, I can't see the relevance, Ms Ozolins.

MS OZOLINS: Well, your Honour, Deputy Commissioner Smalpage has just indicated that he is here speaking on behalf of the Commissioner of Police in relation to the police force's strategy to move forward with things such as discipline, recruitment, promotion and transfer, training, working conditions of members, things of – welfare and wellbeing of members, some of which necessarily include the exercise of power which is reserved under a legislative regime for the Commissioner.

And I'm a bit surprised that the Deputy Commissioner has given evidence that he's never seen the instrument of delegation. It's not a particular point for my line of questioning.

THE CORONER: Then let's not spend any more time on it. What he's doing is outlining the police response on behalf of the Commissioner. He's not exercising powers here by telling us what the plan forward is.

MS OZOLINS: I'm happy to move on, your Honour, but it may become relevant in other matters that I want to cover.

THE CORONER: Sure.

MS OZOLINS: Sorry, so you've given some evidence about project 3030 and I think you gave some evidence either today or yesterday agreeing to a proposition that the reforms were revolutionary and you've indicated that, in your opinion anyway, they're progressing very well. Is that your evidence?---Your Honour, I don't know if the term was "revolutionary". I think it's significant, appropriate, necessary.

And according to the ten-year strategy now being in 2022/23 on the original delivery timeline, we were in the – or to be in the embedment stage. Is that correct?
---Your Honour, I don't have the plan specifically. If you can refer me perhaps to the documents and I'll – if that's what you say.

Well, it's attached to your affidavit. I'm just finding - - -?---Okay, I'm looking at it now, your Honour.

THE CORONER: Which annexure – is it affidavit 3?

MS OZOLINS: It's the main - - -?---Affidavit 1. I think it's MS31.

THE CORONER: Affidavit - - -

MS OZOLINS: MS30, I think it is.

THE CORONER: So, is it the 9 November affidavit or - - -?---Yes, affidavit 1.

MS OZOLINS: No, the February affidavit.

THE CORONER: Right. And it's MS3, did you say?---31, your Honour.

MS OZOLINS: MS30, I've got it as.

THE CORONER: 30, okay?---Maybe your Honour, yeah.

MS OZOLINS: Sorry, MS30 to the 12 July affidavit?---Your Honour, looking at the document, it says under the delivery timetable, "2022 to 2023 embed".

It's this document here. Yes, so we're in the embed stage?---Yes.

And if I can just get you to turn to page 23 of that document. That's where the people's strategy is listed. And with reference to the people strategy, the reference to "people" is the membership of the Northern Territory Police Force?---Yes.

And so - - -?---I think though, your Honour, the strategy is to tri-service, but I will – so people branch covers Police, Fire and Emergency Services.

THE CORONER: So, just so I'm on the right page, are you looking at a document that looks like that?

MS OZOLINS: No, it's the document - - -

THE CORONER: Ten year strategy.

MS OZOLINS: Ten year strategy.

THE CORONER: So, I'm at 30, it's MS - - -

DR DWYER: It's MS31, I think, your Honour.

THE CORONER: 31, sorry.

MS OZOLINS: At page 23, I'm looking at, your Honour.

THE CORONER: Right. I just feel like I might have missed MS31. Hang on. Okay, so I've got MS31 and you're on page?

MS OZOLINS: 23.

THE CORONER: Which – I think that was the page that I held up. It must be – maybe yours is not in colour.

MS OZOLINS: It's not, your Honour.

THE CORONER: Okay, so that was the variation.

MS OZOLINS: Right.

So, Deputy Commissioner, on that page, listed are the key priorities for the agency and they include, amongst other things, becoming the employer of choice within the Northern Territory?---Yes.

And further down the page, "recognising and rewarding remote and outstanding service"?---Yes.

"Ensuring a strong cohesive culture to maintain reputation and to build trust"?---Yes.

Further down, "encouraging a shared responsibility to support the physical health, mental health and wellbeing of our people"?---Yes.

And lastly on that page, "providing leadership to connect, inspire and support people within the agency"?---Yes.

So, taking those priorities into account, you would agree, wouldn't you, and I think - there's no dispute here, but what happened on 9 November 2019 is potentially the most significant event affecting the Northern Territory Police in the last 30 years or so?---It's been a very significant event, yes, your Honour.

Yes. And leadership in the organisation is more important than ever?---Yes, your Honour.

And I think you gave evidence yesterday, you agreed that the executive leadership group is vital and that members having respect for authority is the basis tenement which would drive the police force and enable the executive to achieve the matters set out in the strategy?---Yes.

Now, you've indicated in your affidavit, and I think it's listed in a couple of affidavits, but particularly at par 62 of the most recent February affidavit, that the NTPF considers that good leadership is essential to ethical and effective policing and to support the development of its members. Do you recall saying that?---It's at par 62, your Honour.

At 62, yes, of the most recent affidavit. So, you would agree that effective leadership is important to ensure consistency in decision-making?---I think effectively leadership at all ranks right across the breadth of the service is important, yes.

But consistency in decision-making is important?---Yeah, within operating context, that decision-making is generally informed by our general orders and our practice, yes. So our general orders provide the guidelines and the actions that members should take.

Of course. And what I'm talking about those is consistency in decision-making, so that general orders and standard operating procedures are applied to all members? ---And I think that process is currently going through, your Honour. We've talked about a rewrite of all our general orders going on at the moment.

Sure. I'm just talking about as a general principle though. That consistency in decision-making is important in the application of the standard operating procedures and general orders and things of that nature?---Yeah, generally, yes, your Honour, we try to ensure consistent decision-making.

And I think you've referred in your affidavit that positive relationships between NTPF and operational officers are important?---Yes.

And member confidence?---Yes.

And I think as was referred to in the recent discipline review – that disciplinary review that's actually attached to Mr Porter's statement – that all of those factors, including member and public confidence – or member confidence has a direct impact on the confidence that the public has in the police force?---Perception, yes, I think is very important.

And I think you spoke yesterday about the importance of the culture, image, and brand of the Northern Territory?---Yes.

Now, you've given some evidence and it's – appears in your affidavit at about – your most recent affidavit at about par 63 – the steps that have been taken certainly since 9 November 2019 to promote good leadership and to reinforce expected standards of behaviour. And amongst that list – and I think they're listed at MS 12 but I'm not going to go to them – but you, the Commissioner, and members of the executive have personally met with senior sergeant - -?---My, myself, Deputy Commissioner Murphy, myself – just the senior at the top three. So Commissioner Chalker, Deputy Commissioner Murphy, and myself.

But you've met with the senior sergeant, supers, commanders, and assistant commissioners?---Correct.

You stated that it was to address the direction of the NTPF, according to Project '30?---Yes, back to base.

You discuss consistent leadership?---Our expectations, yes.

You also said you provided feedback to officers on career progression, development, and wellbeing?---Yes.

With a view to enhancing relationships between NTPF and operational officers?

---Yes.

Can I just ask you specify that you want to enhance the relationship between the NTPF and operational officers do you see the operational officers as being different from the NTPF?---They are - - -

THE CORONER: It's not, but you've read that incorrectly. "Enhance the relationship between the NTPF executive and operational officers".

MS OZOLINS: Yes.

THE CORONER: But you left out the word "executive". So they're two groups of people, the executive and the operational officers.

MS OZOLINS: Okay, well I apologise for that. That wasn't my intention. But my question is do you see operational officers as being separate from NTPF, from an executive perspective?---No. They're our frontline.

So when you talk about NTPF you are talking about everybody from the executive right down to the lowest ranking member?---And our non-sworn employees. Everybody. Everybody that's part of our organisation.

The first of the things that you said that you had undertaken to do, that is you and – well, you and Mr Murphy, and the Commissioner – have personally met with everyone from the senior sergeant up and said that there was a process of engagement with that group. And you gave some evidence yesterday about how powerful it was and that you said in 44 years of policing you've never experienced anything quite like it. I wondered if you could just explain what that engagement was all about?---So there was a series of workshops that preceded the one-on-three conversations that encapsulated the principles of the project, of the strategic priorities. So there was an opportunity for those invited to each of those workshops to get it straight from the horses mouth. Now Assistant Commission Travis Wurst was the lead. He provided high level overview how it would be articulated, how it would be – strategy would be implemented – how they could assist us with that process. And then it was followed by then the senior – the Deputy Commissioner Murphy, Commissioner Chalker, and myself then meeting with each one of those individual members for half an hour. And then we would have a conversation with those people along the themes that we'd just discussed there. Who were the future leaders of the police force, what the future direction is, what can we do to improve, how do you interpret Project – there was a raft of a variety of conversations we had with every individual across the police force.

Was it a process of – when you say engagement, you said Assistant Commissioner Wurst spoke to members and then you and Mr Murphy and the Commissioner spoke. Was it a two-way exchange of ideas?---So generically the conversation with Travis Wurst would continue all day and we would then – we'd be off in a separate locality and those members who would come to us. I wasn't part of those ongoing workshop discussions throughout the day, I was with the Commissioner and the Deputy to have those conversations. So rather than – you know, we were separate and they would – we'd, you know, they'd come in half an hour at a time right across – the workshops across – as we went down the Northern Territory.

Sure. The bits that you were engaged with, or involved in, was there engagement with the officer like, asking for feedback and – was it a conversation or was it you - - -?---No, it was a conversation. Very much a conversation, around an opportunity to invite them to talk about the future of the Northern Territory Police Force.

Did you discuss the ongoing inquest with those officers?---I don't know that specifically formed any significant part of it but no doubt it was a significant issue facing the Northern Territory, so it may have been discussed, yes. It's possible. I can't recall now whether it was a – like, a dot point discussion we'd had every member of the executive. Most people in the – were aware of it. It was – and quite bluntly, it was still – it still hadn't been to trial at that point.

But you don't have any independent recollection of it being discussed?---Well, no, not off the top of my head whether I discussed it with any of those people, no.

You say members were encouraged to engage honestly?---Yes.

Would you say that the meetings were conducted in a respectful way?---Absolutely.

Are you aware of any circumstances in which there were repercussions for members who expressed views that were disagreeable, perhaps?---Well, perhaps you could clarify what you mean by repercussions. I find that an interesting concept.

Did the Northern Territory Police Force commence any investigations for disciplinary purposes into members following these meetings?---No, your Honour, not – I have no – perhaps you could give me an example. There was - - -

THE CORONER: I'm not sure how this is going to assist.

MS OZOLINS: Assist your Honour with determining whether or not these meetings with officers are going to have the claimed effect.

Your Honour, the evidence that you've been presented with is one of the significant parts of the Northern Territory Police Force implementing a strategy for improvement - - -

THE CORONER: Sure.

MS OZOLINS: - - - is engaging with officers.

THE CORONER: And are you – are you going to be – I mean, I'm inquiring into the circumstances of the death and I've been told that arising from that there are a number of reforms underway. Are you going to ask me to inquire into the efficacy of the NT Police Forces manner of carrying out those reforms?

MS OZOLINS: Not specifically, your Honour. But what we will be submitted is that the implementation of various of these strategies that have been put forward rely on the capability of the police force in – I withdraw that. What we'll ultimately be submitting is that there needs to be further investigation into whether or not these things are going to contribute to changes that need to be made.

THE CORONER: So you're suggesting, like some of the other parties, that there should be or could be a different approach to reform?

MS OZOLINS: Yes, in some ways, your Honour.

THE CORONER: Right.

MS OZOLINS: I'm not going to take this much further, your Honour. I just wanted to
- - -

THE CORONER: I'm happy for you to suggest what you think is missing or inadequate in these proposals, and what you think could be done better, and ask for the Assistant Commissioner to – sorry, Deputy Commissioner to take that on board.

MS OZOLINS: Sure. But I - - -

THE CORONER: I don't really want to go down to the minutia of how it's proposed that this is going to be implemented unless there's something specific that you say requires something from this inquest.

MS OZOLINS: No, your Honour, I'm happy to leave that there. Perhaps I'll just jump straight to the big ticket item. There's been a lot of evidence about driving cultural reform. And perhaps, Deputy Commissioner, you could just comment on what that means in a very practical way?---Your Honour, I think I've already expanded quite significantly through previous conversations and evidence that I provided. They're outlined within my annexure here. We talked about 11 specific things. There's probably more than that. They include the very things that we've just tried to discuss. Conversations with every leader in the Northern Territory Police Force about what's expected. That's – that is very powerful.

Sorry, my question was actually what – you said you were driving cultural reform. What is the culture that you're reforming? The specifics of it. What do you see as the cultural issues that need to be reformed?---I think we've articulated that quite well through the Project 20/30 Plan. We've got a number of strategies that around

people, investigations, a whole raft of things that we're trying to enhance. Cultural reform is about enhancing and improving our service delivery. Improving everything that we do. Trying to create a culture of continuous improvement, well-being, engagement. All the things that you mentioned before, they are at the heart of what we're trying to achieve.

I guess what I'm asking is like, the two examples that you gave there, are improvement and well-being. What are you trying to improve?---Everything. What do you – so I'm not quite sure how I can answer that, your Honour, or how you're – what you're saying if I think there's something deficient that I'm trying to improve, is that what you're suggesting?

What I'm asking you is to articulate, when you say you're driving cultural reform, what culture needs to be reformed? You've said well-being, and improvement? ---Your Honour, I think all aspects of our culture, as identified in this driving cultural reform, are important factors. Our standards, our – our appearances. Everything that we've talked about. Our investigative process. Anything that we can do to improve the Northern Territory Police Force, is a good thing. That's about how – at the heart of our cultural reform. They are the things. The heart of what we do. So I'm – I'm not sure what specific thing you want to address over another thing, or - - -

I was just seeking your views on the things that form part of the culture that needs reform?---Well I think there's lots of things that need reform. As we've highlighted. That's the pathway we're on. The curation of the CREC is a way to improve our cultural awareness, our cultural sensitivity, our understanding. There – that was one aspect. There's lots of multiple things. Let's improve our culture of understanding of how Aboriginal people work, our culture of how we respond to training. Everything that we're doing. We're actually trying to enhance the capability and professionalism of the Northern Territory Police Force.

Do you believe that the members, that is, police members, are on-board with these cultural reforms that you've been talking about?---Now that's a difficult question to answer. The process that we're embedding and operating at the moment, certainly, at least to the rank from senior sergeant above, was to ensure there's no doubt or clarity about what we're trying to achieve. I think I've indicated – Commissioner Chalker has indicated to me, he's in the process of speaking to every rank of every sergeant. But it's our expectation that our supervisors and senior supervisors, are articulated with that, down to our front-line troops in our work force.

So do you think, going back to my question, do you think that there is confidence that these reforms will be implemented, and the things that you've been talking about will be rolled out?---Well I am comfortable, yes.

You'd acknowledge that a large percentage of police members don't share that confidence?

THE CORONER: How could he acknowledge that?

MS OZOLINS: Well, I'm happy to take the Deputy Commissioner to the recent surveys, your Honour, but I would have thought it be well publicised that there has been surveys done, which indicates a significant lack of member confidence.

THE CORONER: In – in the goals of the 10 Year Strategy?

MS OZOLINS: No, in relation to the capacity of the leadership, to roll out the reforms, as they've been articulated, over the period of the surveys?---Your Honour, I participated in some of the surveys, there's no question, exactly, as you've indicated there.

What's that?---About – repeat the question. There was no questions exactly as you articulated there, so I'm a member of the union - - -

(Inaudible) - - - ?---I'm a member of the Police Union. I participate in those surveys. I've never heard a question like that.

THE CORONER: I don't know - - -

DR FRECKLETON: Your Honour, we've - - -

THE CORONER: - - - well I don't know how this is helpful.

DR FRECKLETON: - - - well that's my point. We're half way through the – the (inaudible) anticipating spending with the Deputy Commissioner, and whether there are some tensions, or whether the Association has some disagreements with the executive, about some issues, it's, in our respectful submission, not to a point in terms of your Honour's task in this case.

MS OZOLINS: Well, your Honour, my client represents 97 percent of sworn members. And in August last year, there was a survey, and I understand the Deputy Commissioner is certainly a member, and was privy to that - - -

THE CORONER: I think it's been publicised.

MS OZOLINS: It has, your Honour - - -

THE CORONER: I just don't understand the relevance to my inquest, in relation to putting suggestions to this witness, about the view – what the views of the members might be.

MS OZOLINS: Well, your Honour, a large portion of what this witness has given evidence about in affidavit in other areas, is in relation to the well-being and welfare of members, which we would say, is linked to promotional and transfer processes, is linked to disciplinary processes, which we – is also – forms a part – a large part of the Deputy Commissioner's affidavit evidence. And in circumstances where specific questions, or answers to the questions put in the survey, related to discipline,

perception of double standards, things of that nature. In my submission, it is entirely relevant to put those things to the Deputy Commissioner, and obtain his comments.

THE CORONER: But the reforms are designed, in my – I understand, to address those concerns.

MS OZOLINS: And - - -

THE CORONER: What are you asking? Do you agree that there's been a problem in regards to x, y or z, and do your reforms intend to address that, and which reforms in particular. Is that what you're asking?

MS OZOLINS: Your Honour, that's what I will come to, but I – in my submission, I'm entitled to establish first that there is a significant concern amongst the membership that disciplinary processes for - - -

THE CORONER: But you can't establish it through this witness, I don't think. I think you can if you've – if you want to, for example, rely on a document, a survey.

MS OZOLINS: Well I haven't got that far yet, your Honour.

THE CORONER: Well I just feel that without some basis, I'm – I'm at a loss as to how this can assist me.

MS OZOLINS: Well perhaps your Honour, I will persist, I don't have copies of the documents with me. Again I didn't anticipate it to be as big an issue as it's become.

Perhaps you could take it from me, Deputy Commissioner, that there was a survey conducted in August 2022 of the – well 1608 - - -

DR FRECKLETON: Your Honour, I object to this. I understood your Honour to have given a ruling about relevance. But my learned friend has said perhaps she will persist anyway - - -

THE CORONER: Yes, I - - -

DR FRECKLETON: - - - I'd ask that your Honour (inaudible) - - -

THE CORONER: - - - I'm not going to permit generalised questions of this nature, and I'm certainly not going to permit questions about a survey which has not been provided to the parties at the Bar Table, and isn't being provided to the witness.

MS OZOLINS: I'm happy to provide it to the witness, your Honour.

THE CORONER: Well, we need to all have a look at it, Ms Ozolins.

MS OZOLINS: I'll move on then.

In relation to the way in which the disciplinary process was, and will be dealt with, one of the – on my instructions anyway, there is a disconnect between the views of the executive, if you like, and the membership in relation to the application of general orders broadcast, instructions, and things of that nature. Would you agree that there is a disconnect?---Perhaps if you could give me some clarity around what you consider that disconnect to – to be - - -

So would you agree that general orders, standard operating procedures, internal instructions, and all of those other directive documents, apply to all members of the police force, regardless of rank or commission?---Well the general order applies to those that it's applicable to, in general principle, that would be the case. Unless there's some legislative barrier, but that's not the case.

So yes, general orders are applicable to all officers who are exercising (Inaudible) - - - ?---I – I would expect that to be correct, yes.

I think you gave some evidence yesterday though, that senior officers often don't need to know every standard operating procedure and they are entitled to rely on advice give to them. Do you remember giving that evidence?---Yes.

And do you maintain that?---Yes, I think, yes. It's difficult. Yes, I think that's correct, yes.

So - sorry, your evidence is that senior officers don't need to be familiar with standard operating procedures?---I didn't say that. I didn't say that at all.

DR FRECKELTON: That's not what he said.

MS OZOLINS: What is the position?---The position is, depending when you've got to exercise a determination about a general order, if I need to know that general order I will examine it. In my role, for example, if I'm a front line officer I would expect they'd have a different appreciation of a general order because they would probably be applying it or using it or dealing with it on a more daily or frequent basis but I think no member of the Northern Territory Police Force will know every general order that's out there. There's thousands of them.

THE CORONER: And that's why they're available on line and possibly in the old days, in hard copy, so that when an issue arose people can access the general orders as needed to be guided by those orders - I take it.

MS OZOLINS: Yes. And is it a guide, as her Honour said, or is a general order something that dictates what a - - -?---A general order is generally more specific of how it should take place.

THE CORONER: Sure. A specific guidance?---Exactly, your Honour.

MS OZOLINS: So in terms of disciplinary proceedings and certainly on my constructions of disconnect, would you agree that there's a perception amongst

members that disciplinary proceedings - or the disciplinary process - is not always applied equally across the board.

DR FRECKELTON: I object to the question again, your Honour. Same basis. What may or may not be a perception amongst some portion of the members of the association is not an issue that can assist you in relation to your inquest into the causes and circumstances of Kumanjayi Walker's death.

MS OZOLINS: Well, your Honour, your Honour is being asked to consider in due course a review of the disciplinary scheme which puts responsibility for disciplining members on senior offices and to make - - -

THE CORONER: I don't - - -

MS OZOLINS: To exercise discretions in relation to whether something will be dealt with on a managerial basis or a disciplinary basis, which is not that different to what is currently occurring now. So in my submission it's relevant for the Deputy Commissioner to have a position - a Northern Territory Police Force position - about how that's going to be determined.

THE CORONER: Well, I think it's - it's part of the issue is "Are you aware." You say you represent this group of people. You can just put it as a proposition if that's the basis, and you've got a basis for that proposition to be put and ask a question based on that proposition.

MS OZOLINS: Your Honour, my question, as I recall it, was in relation to the application of the disciplinary regime and is it applied consistently across all ranks and commissioned officers?---I believe so.

What leads you to that belief?---Well, your Honour, I think it's a very open-ended question. I mean, I don't sit or make determination about every disciplinary matter that affects the Northern Territory Police Force, so there are people within the organisation who deal with that in a - as I understand - in an effective or an appropriate way, just to provide some clarity to your Honour I also sit on the consultative committee, which is a committee which the senior executives sit with the NTPA to discuss issues and communicate around sticking points around things that may be of grave interest to both parties. So again, I - I'm not sure this has been - - -

Certainly, (inaudible) - - -?---I'm not sure that this has been articulated to that degree.

You do sit on - or make determinations in relation to at least some disciplinary matters?---Some disciplinary matters but not every disciplinary matter.

I wasn't suggesting every single disciplinary matter but from those that you've seen are they dealing with a whole range of matters across all ranks and commissions? ---Without me having the list of the ones I've sat on, I'm just trying to think through in my head, your Honour. I am not sure. If you can give me an example of one that concerns you I might refresh my memory but I'm not - - -

So you can't recall?---So - well, off - I can't recall which - I signed - I've signed - been involved in several of them which I can't recall what ranks they were or - - -

So are you saying that as far as you're aware, the Northern Territory Police Force does exercise its disciplinary powers in a consistent way across all ranks and commissions?---I think, your Honour, and I think there's - it touched upon in the Galiat review and I think it's touched upon elsewhere, the way the current structure of the police disciplinary system sits, we rely on a process - where as a prescribed member, which is from the rank of Senior Sergeant and above, can make certain decisions around discipline. So the consistency across the breadth and depth of those people may vary. I can't - they may have different perspectives, so they may have different views. I think the aim that we would strive is to try and be consistent with that - I'd agree with that. But again, from time to time I am sure people have a different perspective of the same event.

So do you, having heard and sat through the evidence in this matter, do you think that the disciplinary process has been used in a consistent way to deal with members involved in the incident on 9 November 2019?---Insofar as the legislation provides, yes.

Sorry, I'm not sure what you mean by that?---Well, I suspect you do, but think the reality of it is there are legislative barriers to what police can take, dependent on dates of discovery and other issues that are regularly raised by the NTPA with the Professional Standards Command and if, for example, a prescribed member didn't address a correct date of discovery, it limits the response lawfully that can be delivered by a prescribed member.

That's true, that's accepted. So you're aware that various members of the IRT and other non-commissioned officers were subject to disciplinary proceeding or been dealt with by being given remedial advice in relation to their actions on 9 November? ---I'm aware some members have, yes.

Yes, and certainly constables involved in the IRT deployment were provided with remedial advice in relation to various matters including things like failure to obtain a proper briefing, carrying a long arm outside of the station at Yuendumu and also, as we heard yesterday, the manner in which Kumanjayi Walker was taken from the scene and also the way CPR was administered. You would have heard evidence about all of those things?---I have.

And you'd agree that the purpose of remedial advice is to modify or remediate the behaviour of officers to elevate them to an acceptable standard?---Yes.

And as I think Mr Porter will give evidence about tomorrow, if the remedial advice is provided in a timely manner it provides prompt encouragement for members to correct their behaviour. Would you agree with those - - -?---As a general principle, yes.

Yes, and remedial advice is, of course, part of the disciplinary process and I think you said yesterday it was the lowest form of discipline?---I believe that to be the case, I'd have to check the legislative - the legislative framework but perhaps Mr Porter could give greater clarity on that.

Sure. But in terms of the evidence that you are aware of in relation to those IRT members getting remedial advice, do you see an inconsistency with, for example, those members being provided remedial advice as a disciplinary action taken against them for dragging the body of Kumanjayi Walker in circumstances where you have given evidence that given a similar set of circumstances you might have done the same thing?---Again, I think in terms of the general order specific, that it shouldn't happen. I think the remedial advice then reflects how we've treated it, that it's at that very bottom end and giving remedial advice in similar situation where appropriate, don't do it again. I don't think that's inappropriate.

Sure. But yesterday your evidence was that you would have done the same thing.

THE CORONER: If he did, maybe he would get remedial advice?---And I would take it.

This is - this is the question, your Honour. Another example was that members - the IRT members, that is the constables, were disciplined in relation to issues surrounding the administration or the ceasing of administration of CPR notwithstanding that every officer who has given evidence in this inquest has commended them for the way they went about conducting life saving measures. Do you see that as an inconsistency?---Again, your Honour, I think where the general order is defined specific outcomes, I think their delivery of remedial advice may be entirely appropriate. I'm not quite sure what you want me to suggest.

But aren't they matters where disciplinary action - - -?---Well, you keep - - -

- - - would have been taken but for the time limit running out?---But I think there is where again, your Honour, the term "disciplinary action" creates an inflammatory-type environment. It's remediated advice. Perhaps next time, don't do it again. How is that not an effective tool for us to help with the workforce.

It may well be, but I understood your evidence yesterday to be that it certainly seemed as a form of discipline, the lowest form of discipline?---Within the current structure of the framework, hence the desire of the Northern Territory Police Force to explore other options to improve.

Of course. But presently, even though the philosophy has changed, it still is a practice that is continued, and that remedial advice, if you like, that lowest form of discipline, goes on an officer's record as a disciplinary history, doesn't it?---So again, your Honour, I'm not quite sure what the impact of remedial advice on an officer's history, as opposed to managerial advice or a counsel or some other thing. It has no, you know, stigma that I can see that would attach to affect his future career in the Northern Territory Police Force. If there was multiple ones, I suspect it may have an

impact, but I'm not sure that I see it as a punitive thing.

Well, perhaps I'll come to that shortly. You made some submissions in your affidavit at about par 259 of the February affidavit about the varying recollections of Sergeant Frost, Superintendent Nobbs and Assistant Commissioner Wurst and you've given some conclusions based on an assessment of the evidence there and you also gave some – or was subject of evidence yesterday about the different conversations and things of that nature. You conclude that Superintendent Nobbs and Assistant Commissioner Wurst having slightly different recollections of the phone call and subsequent authorisation. You said that's unsurprising. Do you remember saying that?---I accept words to that effect, yes.

Yes. And further, you said it appears that Nobbs and Frost intended that the IRT and dog unit would be involved in the arrest, whereas Wurst did not have this expectation. Do you remember saying that in your affidavit?---Yep.

Do you agree that the conflicting accounts and recollections of all these officers might have been resolved if each of those officers approving deployment of a tactical group had kept notes?---Again, your Honour, it would have been helpful for this process, I'm sure. The very dynamic nature of the things as they unfold are perhaps dictated otherwise.

Well, in fact, it's a requirement of the general order in relation to notetaking, isn't it? ---Perhaps you can refer me to that section then.

It's an exhibit I believe, your Honour, maybe 14 from recollection.

But you recently issued an internal broadcast in relation to the importance of notetaking to reinforce those matters that are in the general order?---Yeah.

Your Honour, I think it's exhibit 14, from memory.

DR FRECKELTON: It's the Territory duty superintendent.

MS OZOLINS: Pardon?

DR FRECKELTON: I think that's the Territory DUTY superintendent.

MS OZOLINS: It's notetaking, notebooks and diaries, in any event.

Well, perhaps I'll just read it to you. General order 12 on that general order says that, "Police members in the course - - -

DR DWYER: 17-29 in the brief of evidence (inaudible).

MS OZOLINS: "Police members, in the course of their duties, are required to take notes regarding their observations, conversations and actions." And it goes on. Do you accept that's what the general order says?---I accept that's what it says, if you

tell me that, yes.

And as I said, the importance of notetaking was reinforced by yourself during this inquest. Are you aware of any disciplinary action or remedial advice given to Assistant Commissioner Wurst or Superintendent Nobbs in relation to that and the failure to take notes?---No, I'm not aware, your Honour.

Sorry, not aware?---No, I've never provided remedial advice, so no - I'm not sure if anyone else has, but I haven't.

DR FRECKELTON: I'm trying to remember the detail of this, but my recollection, and I stand to be corrected by Ms Ozolins on this, is that Superintendent Nobbs made a significant volume of notes shortly after the various interactions.

MS OZOLINS: I think the notes were taken on the night of 9 November or maybe the 10th. We've spoken briefly, but you gave some evidence that it wasn't the job of Assistant Commissioner Wurst to engage with detail in respect of the deployment or to be aware of the parameters of the arrest plan. Do you recall saying that in your affidavit in January?---Yes, I do.

Yes. And you said that he was entitled to rely on information provided to him by an experienced and engaged divisional superintendent who was liaising closely with the forward commander. Do you recall that?---Yes.

Do you have an expectation that an assistant commissioner would at least be familiar with the functions and capability of the unit who's deployment he was authorising?---I think this has been the subject of some discussion, your Honour. The deployment was for general support. I think Assistant Commissioner Wurst is very familiar with what general support would be, and appropriately, he would have an appreciation of what that is.

I think my question was a bit broader, would you, as a deputy commissioner, have an expectation that if an officer was taking an action, that they would at least have a familiarity with the function and capability of the unit?---Well again, your Honour, to provide some clarity around that, as an assistant commissioner, and later as a deputy commissioner, unless there's a specific requirement that I approve something or it's for my advice, there's a difference between what they're advising me or I'm approving something. If I'm approving, I would seek further clarity and perhaps get the general order read to me or provided to me. I think that it's entirely appropriate for an assistant commissioner when he's getting a phone call and ask that this is what I propose to do to approve it. He would have a really – and again, I can't speak on behalf of Assistant Commissioner Wurst, I'm sure he could clarify this very quickly, but I'm sure he had a really detailed appreciation of the capability of police generally. He may not have a high level knowledge of every capability of every specialist unit, but I think all the senior executive have quite an appreciation of the roles, certainly of general policing in a general support role.

So you don't see any need for a senior officer to have at least read the standard

operating procedure when deploying a unit and operates under - - -?---Well, I didn't say that. I said what would normally happen, if there was a need for the officer and they were specifics because they're ringing you to ask for your specific approval, they would direct us and read out the general order to us and say, this is the requirement. I'm ringing you because of this. Under the general order, these are your responsibilities. If I had any concerns, I would have it faxed to me or I'd take some action. I'm sure others would – I presume others at rank would do the same thing. So again, they would have the specifics of the SOP if they needed to know.

So as far as the evidence in this inquest goes, none of that happened in this case, did it?---Well, I don't know that anyone rang and provided Assistant Commissioner Wurst with a copy of the IRT SOPs. And reading the evidence that I've had, some of the members of the IRT didn't have knowledge of the SOPs.

So has any disciplinary action or remedial advice been given to Assistant Commissioner Wurst - - -

DR DWYER: I object. On what basis would it be, in circumstances where the evidence of Officer Wurst and Superintendent Nobbs is that this was not a high-risk deployment under the IRT for assaults, both of them were very clear about that.

So, my learned friend would have to put the basis on which they ought be disciplined and the relevance of why they were not disciplined to your Honour's inquest. Presumably, they are both members of the NTPA, but in any event, I am not sure how this assists your Honour, because we can't follow the evidence. Because it's not clear in what circumstances it's suggested they should have been, or the relevance of it to your Honour.

MS OZOLINS: It was put by counsel assisting to Assistant Commissioner Wurst the disconnect that exists between a person, any person – it doesn't matter if they're an assistant commissioner or someone else – but somebody deploying a unit with certain capabilities and not being aware or even having read the SOP in relation to those capabilities. My question to the Deputy Commissioner simply was it certainly didn't happen in this case, from what I gather of the answer. Should it have been given? Should officers exercising authority for certain deployments – should there be an obligation, or should they be given remedial advice in relation to being familiar with SOPs?

THE CORONER: They're two different things.

MS OZOLINS: Well, that's the broad - - -

THE CORONER: So - - -

MS OZOLINS: That's the relevance to the question, your Honour.

THE CORONER: I think he's answered the first one?

WITNESS: To give - - -

MS OZOLINS: No, there hasn't been any remedial action or disciplinary action.

THE CORONER: No, the first one was should they.

MS OZOLINS: Should there be.

THE CORONER: And he answered that with some nuance, "It depends on what is being – what the decision is being" – sorry, "What the decision maker is being asked will guide whether or not that it requires a reading of the SOP".

MS OZOLINS: And is that the answer?---Well, your Honour, the SOP – there's hundreds of them. Assistant Commissioner Wurst has – I think was at a function on this particular night. I know from my own examples here in the Northern Territory I don't have every SOP at home when I'm contacted through all hours of the day and night. If there is a need under the general order for a specific delegation of my authority the person that rings me provides me with the advice and then would then send me copies on my phone so I know specifically what I'm authorising, if it's needed. From my understanding of this event was that Assistant Commissioner Wurst was fulfilling the roles of Commander Southern and it was more an advice that they were deploying to the – as the IRT to Yeundemi - are not – because if it had been at the next level as a high-risk deployment it would have triggered other things. So my understanding of it is it was appropriate that he got a phone call – it was – and what he did was appropriate.

My question was - - -

DR DWYER: Your Honour, can I assist my learned friend in this respect, and I apologise for interrupting, Ms Ozolins. In the transcript of Superintendent Nobbs, at page 1,104 he makes it clear the basis on which he was calling Assistant Commissioner Wurst. And he says – so it's put to him:

"Commander Brad Currie had effectively a night off and Commander Travis Wurst stepped in for him?" "Yes". "So Commander Brad Currie was out camping and uncontactable but Travis Wurst stepped in, he was in the delegation of assistant commissioner?" "Correct". "Did he approve the IRT for general support operation given that he was effectively stepping into Commander Currie's shoes?" Answer, "No, he was in effect stepping into Assistant Commissioner Narelle Beer's shoes. She was the acting deputy commissioner and Travis was the acting assistant commissioner. Brad Currie was the commander, the nominal commander. So the command structure for Alice Springs at the time was myself and my superintendent colleagues holding our respective portfolios".

And he goes on – he's asked, "Were you intending by having the conversation with Assistant Commissioner Wurst to get the approval for the IRT?" And he says, "No, not in the context of approval from an assistant commissioner. It was just an administrative approval given the absence of Commander Currie. So it wasn't

sought to say this is a high risk and I'm seeking (inaudible) 2.53.58 deployment. And accordingly I'm going to assistant commissioner. It was – the approach to the assistant commissioner was in the absence of a substantive commander and in the context of letting him know about the administrative support”.

So it needs to be put specifically that is it a disciplinary offence to not take a note in the circumstances, and if so what's the relevance to your Honour's inquest.

MS OZOLINS: My question was simply a broad questioning of in the deputy commissioner's view whether a senior officer authorising something should be familiar with the SOP. It wasn't specific to any of that evidence.

THE CORONER: Well, I think he's given an answer to that.

MS OZOLINS: Yes, I think he (inaudible).

THE CORONER: In some circumstances yes, it would be necessary to be familiar with the SOP and in other circumstances it might not be.

WITNESS: Your Honour, I can give some really specifics around, for example, a high risk deployment, what the - - -

THE CORONER: No, no, (inaudible).

WITNESS: Okay, (inaudible).

MS OZOLINS: I was just seeking a broad - - -

THE CORONER: And I think you've got the answer – it depends.

MS OZOLINS: Yes, I have, your Honour.

THE CORONER: It depends, Ms Ozolins.

MS OZOLINS: Yes, your Honour. The only other thing I wanted to ask on that topic, Deputy Commissioner, was about discretion and police exercising discretion. You gave some evidence about – your evidence was, “Discretion is that ability for individual police officers to use their judgement. Perhaps it doesn't necessarily align neatly with directions from the law about when they may or may not exercise powers available to them”. And I'm just wondering if you could clarify that? Do you say that there are circumstances where an officer can exercise their own judgement contrary to law, or contrary to a general order, or contrary to a statement of – sorry, a standard operating procedure?---Your Honour, yes, I think it happens all the time. Most of which, I will point out, that probably doesn't come to my attention. But I think we've heard some evidence here, again, where we have a lawfully issued warrant for a man and a seasoned sergeant said, “I'm going to wait. I'm going to take time. I'm not going to execute that warrant straightaway”. That's discretion that they – they are police officers right across the Northern Territory apply discretion I think – they

stop people talking on phones, they make decisions, I'm not going to issue an infringement. They – there's 101 different variants of police officers using discretion that I think's appropriate and wouldn't attract and criticism by anybody.

What about in the face of a general order which specifically required an officer to act in a certain way?---Again, if you're asking me about a specific example that I know about and then we may have a different point of view. But I think police officers all the time use their discretion and I'm sure at times they don't align neatly to a general order or other things. I'm sure it happens every day in the Northern Territory.

So how do you determine who gets disciplined for not following general orders and who does get disciplined for not following and who does not for following general orders?---Well I'll clarify, that's not always me. Under the current disciplinary system
- - -

You as in the police force?---Well, the police force, under our prescribed member model they make decisions at a local level where they consider it to be a serious breach of discipline and we don't need to take further action. That's where it happens.

And is there any policy or guideline which directs how those decisions are made? ---Again, the general order provides the instruction of how we'd expect things to be done, but again, I think then it boils back to that discretion and the model we've talked about where individual members at that rank, if they feel it's not a serious breach of discipline and take no further action well, the matter resolves there by some other process. It doesn't go any further.

How do you ensure consistency when – perhaps I'll go back a step. Are you saying that the general orders are a guideline?---No, they're not a guideline, they're a general order. But again, it comes back to the application of when they think they need to enforce it. That's the discipline process. That's – that's how it operates.

Sorry, just so I'm clear you're saying a general order is – it must be followed but it's up to a prescribed member to ascertain whether or not they think action should be taken?---I think the general order dictates what should happen and the instruction about what we want them to do, and the instruction what they will do. I think you're talking about then is whether we will take action against those who don't comply with the general order. I think that's the differentiation, around whether it invokes punishment or not.

How will officers know if they're allowed to follow a general order or whether they're able to choose not to follow a general order?---Well, if they – well, they are required to comply with a general order. That's the requirement. I think the point we're saying is whether any disciplinary action should take place if they don't comply. So I'm not sure, on six of one and half a dozen of another, I think we trust our officers in the field who when they find an officer that doesn't comply with a general order, or something they've done wrong, they would identify it, take steps. If they think it's a serious breach of discipline they'll take it further. If not they'll provide guidance in the

field. I don't – I don't – I don't sit over every constable, sergeant, senior sergeant, superintendent, or commander to give them that clear direction. There's that innate responsibility at that level of - - -

Of course. But all I'm asking you to confirm from a Northern Territory Police Force perspective is a general order a guide, or is (inaudible)?---No, a general order – it's called – well, it's not called a general guide, it's a general order.

That's right. So it's an order and officers are obliged to follow it?---Yes.

Standard operating procedures, are they guidelines or are they mandatory to follow?---I think they're a mandatory guideline to follow. I expect them to follow them.

So general orders and standard operating procedures are mandatory. What about internal broadcasts?---Generally an internal broadcast is a reminder of their responsibility, and that's the purpose, is just to remind the work force.

So would you agree that in circumstances where disciplinary action is taken against some officers for breaches of general orders, or Standard Operating Procedures, and not applied in the same way to other officers, that can create perceptions of double standards?---I can understand some perception that may be felt that way, but again, I'll draw back, I don't know that that's necessary the fault of the Deputy Commissioner or the C2 Executive, if people in the field, who are applying that process, I think – you know, I think individual sergeants, senior sergeants, depending what rank you are, depending what experience you've got, to – you know, your exposure to that, I think they would have a better understanding of when to apply it. I think - - -

Well sergeants are not prescribed members are they?---No, senior sergeants are though, yes.

Yes. So are you saying that the disciplinary processes within the purview of prescribed members, and it's not an – a matter that's driven by the executive level of the Northern Territory Police Force?---The executive level of the – as the delegations come up through the schedules to who makes the final determination, it does become under the clear purview, certainly of Professional Standards Command. And then if the delegation, or the schedule says it goes up, it'll come up to a different level for a final - - -

Sure, but you give the direction from time to time for matters to be investigated, haven't you?---I have, yes. If there's something, I would – usually as a result of a complaint made, we would refer to PSE. I don't dictate what they do. I refer it to the Professional Standards Command, ICAC, and others who are relevant, to meet our statutory obligation. But I don't tell them what to investigate. I'll refer the complaint to them.

Sure. In relation to the new disciplinary regime, now there was a working group that was established some time ago, that's right isn't it?---As I understand it, yes, that's correct.

And separate from the working group, the report review, or the review – I can't remember what it's called, but it's BP15 I think, attached to Bruce Porter's statement, and in it, it's talking about the need for a robust disciplinary system, and taking action as part of the new strategy. You said in your affidavit, at par 79 of the February affidavit. "The NTPF has taken, and is taking firm disciplinary action against members", I'm paraphrasing. It's committed to reforming its PSC internal disciplinary processes to ensure that inappropriate behaviour is addressed in a robust and timely manner?---Yes.

You'd agree, wouldn't you, that – and we've heard evidence about it in this matter, that in the last few years, and certainly as it at present, it's acknowledged that matters of – disciplinary matters are not being dealt with in a timely way?---I would accept not all disciplinary matters are dealt with in a timely way. I think resourcing demands have had their issues. Yes.

So the new regime is intended to focus, it's said, on managerial guidance and advice over a punitive regime. And the – and correct me if I'm wrong, but the Commissioner of Police has accepted the report, and accepted in principle, all three of the 83 recommendations?---He's accepted in principle support, I think the issue for us, collectively, going forward is, what that means.

Sure?---Because what the report articulates, may not be what eventuates.

Do you recall reading in that report, that one of the findings was that the current system makes members scared to do their job for fear of getting a s 79 notice? ---That was Mr Galiat's (?) perception, yes.

And also that the current disciplinary model is a stick without a carrot, and he said you cannot smack and then say you're educating them. Do you agree with that observation?---Yes and no. I think – I reverently believe that the disciplinary system needs significant overhaul. And I think it's very punitively focused. I totally agree with that. And I think there clearly is an opportunity for a better way forward. Which again, from my experience and exposure, should be managerially based. What it looks like, how we get there, what the recommendations and findings of that report, how they articulate to the end, will be ongoing discussions between the Northern Territory Police Force, the Northern Territory Police Association, and other stakeholders, ICAC, Ombudsman.

One of the significant concerns obviously, was a finding from the review, is a reluctance for officers to speak up for fear of retribution, ostracism or of not being supported by their managers. Do – does that concern you in moving towards a more managerial based model?---Your Honour, I think – I don't know the finding where the – where its nuclear starts, where it comes from. All of those findings are of concern to the Northern Territory Police Force. I think that's the whole purpose of stepping

forward and coming up with a new model. I – I don't follow suit that that finding should prevent us having a managerial base focus. I'm not sure - - -

Doesn't the – and I'm just – I don't want to go into too much detail, but doesn't the new – this managerial versus disciplinary process, isn't that really like what we've got right now, with the s 14C management type process, separate from the identification of serious misconduct?---I think there are some similarities, but I think that could require greater depth of cooperation and communication between us, to find out – I'm saying the Northern Territory Police Force, and the NTPA, and the membership, to provide what – what that means. Is there a differentiation. What are we trying to achieve. If – if it turns out that 14C's the appropriate system, well that might be effective. But I think there's greater depth of enquiry needed.

So there will be further consultation?---Absolutely. I think – well the process we're at the moment is just at the nucleus. We've just read the report, and we've got to all - - -

Sure, just the last thing on that, on the new disciplinary regime. It proposes that – moving forward, the way in which members might be terminated, will be a much shorter, sharper process, and the review – do you recall reading that, and the - - - ? ---I've read – I've read his – bear – I'd just like to reiterate, your Honour, it's an independent report, prepared by an independent. It's his views in that report, not mine.

(Inaudible) accepted the report, yes - - - ?---I've read it.

- - - yes, you've read it - - - ?---In principle, I accept it. And I think the Commissioner's accepted it in principle. I think, as we've said, the devil's in the detail.

Sure, but just in the termination powers, and it's at page 15 of that report. Just going through it briefly, it says, doesn't it, that if a person's going to be terminated, or an organisation, when the organisation decides it doesn't have confidence in a member, a delegate of the Commissioner, and they're suggesting an Assistant Commissioner, or a panel of Assistant Commissioner's, could decide to terminate the member, and issue him or her with a show cause notice. So that's the first step?---Yeah.

The member then has seven days to respond?---That's the recommendation, yes.

Yes?---Yeah, yep.

And if the response is accepted, there's no further action. But if it's not accepted, or the member doesn't respond, the member is immediately terminated?---That's the recommendation, your Honour, yes.

Yes. And the only basis allowed for appeal is that the termination was harsh, unjust, or reasonable?---That's the recommendation.

What did I say?

A PERSON UNKNOWN: Reasonable.

MS OZOLINS: Sorry, unreasonable. Harsh, unjust or unreasonable. Now, the big different here is that isn't it proposed that, even if a member was successful in their appeal, they are not entitled to return to their job?---Again, your Honour, that's in the recommendation of Mr Galiat, yes.

And is that something that the Northern Territory Police Force intends to – well you've said the Commissioner's accepted it in principle, is that something that's intended to be progressed?---I think, your Honour, and I think for the purpose of all the police officers that are listening as well, we're a long way from that. The principle of it, we accept. I think we are in the spirit of cooperation, we want to work collaborative with NTPA to figure out we can go through that. If – we haven't even commenced the first step, other than read the report. We haven't established – the project team is about to come on board shortly. And we can explore this in greater detail, but – but - - -

Can I just ask, that project team you're just saying is getting on board soon, is that the same group, or is there going to be a new group?---No, no, these will people we're employing as – to fulfil project manager roles to help us drive, set up the necessary project management framework, so we can go through the consultancy phase to figure out collaboratively what can we do, what's - - -

So - - - ?---What's the sticking point. Some might be agreed, some a sticking point. Some can happen, some – there's lots of work, your Honour, it's just - - -

So there's a consultation phase coming?---The – it's all consultation - the next phase. I think the (inaudible) at the moment is we've read the report, we've agreed in principle, let's see where we progress down that pathway.

Sure. Okay, I just want to move on because I appreciate that I've been a bit longer than I said I would be. Wellbeing is obviously something that is of significant concern to my client - the wellbeing of members, and you've indicated in your affidavit dated February 23, at about par 236 that, "The Northern Territory Police Force takes the wellbeing of its members seriously" and I think you've referred to it in other parts of your affidavit as well. You've said you acknowledge the particular challenges faced by members following the death of Kumanjayi Walker including the absence of a debrief. What particular challenges are you referring to in terms of member welfare?---I think the challenges are well articulated. I think they've been fleshed out in here. A formal debrief might've been an opportunity in an environment to discuss the incident as a whole. It's never really had the opportunity for everybody other than through a preliminary hearing, a trial, an inquest, to hear all the circumstances what happened. Normally those sorts of things are for critical incident or would be, in an open environment, we would all talk about it, "What did we learn?" "What's good", "What went well" "What didn't" "What can we do better", you know, that's a normal traditional debrief. This didn't happen in this instance and I think that

may have contributed to a sense of isolation, you can't talk, and as we've heard right throughout this inquest, various members of the investigative team, the coronial team, individual members, all feel affected.

Sure. You did say in your affidavit that MTPF continue to offer support to its members involved or who were affected by the shooting. Would it surprise you to know that a consistent theme reported by members was that, as you've already pointed out, they felt very isolated and didn't feel that the organisation supported them at all?---I'm not surprised at all, no. The whole structure of what has transpired has led to that - both from - I'm going to say both from the NTPA perspective and from the Northern Territory Police perspective. "Don't talk". "Don't do this". Legal issues - complexities, siloed people - all those things I think in a team-based environment like the police, can create that sense of isolation. We have a group of criminal investigators who didn't get a choice on what they were going to get investigated - were tasked to investigate this matter and they've - their wellbeing is equally affected. The people at Yuendumu - everyone. Everyone involved in this incident. We heard an officer in here today in tears. It's a significant mental strain on everyone involved - including the community, so I don't want to mean just police, your Honour.

So you specifically said that you were aware of support being offered? What do you think they were offered?---Every one of the Northern Territory Police Force can access ESS. They can access our wellbeing services. They can talk to chaplains, they can speak to our psychologist - that's every member.

What about more specifically - and I will give you an example. We had some reports that in attending court as a required witness, a police witness, that people felt they were ignored by police when they attended to give evidence they were left to look for somewhere to sit on their own where they weren't, you know, likely to run into a family member or other parties to the proceeding and that they weren't provided any assistance or guidance whatsoever - or support from the organisation?---So, again, your Honour, I am not sure whether you're talking about the criminal trial or the coronial aspects of it because I think there's two different ends to this - and I will put out - there was a huge gaggle of reporters, lawyers, all out the front of the criminal court, which no doubt was very daunting for any witness who had to walk in there. I don't know how the Northern Territory Police could've articulated that better. I'm not physically aware of people

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