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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 3 MARCH 2023

(Continued from 02/03/2023)

Transcribed by:
EPIQ

MURRAY SMALPAGE:

THE CORONER: Mr Boe.

MR BOE: Your Honour, may I just indicate that about 10:45 Mr Hearn and I will need to leave the Bar table. But what we've indicated to counsel assisting in respect of Porter is that we'll listen to his evidence over the weekend. If he is being recalled on Monday if we have some matters we'll raise it then.

THE CORONER: Okay, thank you for letting me know.

Ms Ozolins?

XXN BY MS OZOLINS:

MS OZOLINS: Thank you, your Honour. Deputy Commissioner, I might just ask you about the wellbeing review conducted in 2021 with the results I understand being returned – or the report being returned in 2022. And that wellbeing review is attached to your affidavit of February this year, at MS 9. That review indicated – so there's significant gaps, or concerns raised were things like stigmas, ongoing stigmas about mental health being raised. Do you agree with that?---Yes.

And they identified gaps at variations in services. And I'm reading, in fact, from page 9 of that report. Inconsistent implementation of well checks, debriefs, and post critical incident follow ups, a lack of confidence in the services, and confidentiality concerns, and limited support for members when they were preparing to leave the service. Some of those things have been addressed – and I refer in your affidavit – particularly implementation. You've referred to them at MS 12 as an attachment to your last affidavit at page 7. Under the heading (inaudible) on the welfare. And you reference the reintroduction, or the fill with a permanent role with chaplain and social workers. And you've indicated that a peer support program is being revisited, and there's a wellbeing project team that's been established?---Yes.

If I could just ask you about the peer support program, and I understand it's still being established, but what do you anticipate that looking like?---Your Honour, I haven't got the full clarity that I can present to the inquest at the moment of what it will actually look like on the ground. But in a generic principle it's along the lines of we provide the best peer support to our workforce that we can from peers. You know, it speaks for itself. I can't give you clarity around job descriptions or – I haven't seen it.

Do you anticipate though that it will be operational members who are effectively taken offline from their operational roles to perform that peer support role?---Again, your Honour, I'd be – I'd be making it up on the run if I suggested that was the case. I'm not sure that will be the case so - - -

And this will all be nussed out in terms of how the job descriptions and - - -?---As part – yes, as part – as it progresses. As it works through its progress implementation phase.

DR DWYER: Your Honour, I apologise for interrupting my learned friend. The live stream's not working.

THE CORONER: Right. Do you need me to go off the - - - ? Well, I'll just wait for a minute and see what happens.

All right, we'll adjourn quickly.

WITNESS WITHDREW

ADJOURNED

RESUMED

MURRAY SMALPAGE:

THE CORONER: Yes, Ms Ozolins?

MS OZOLINS: So, Deputy Commissioner, just a before the break I asked you about the peer support program. Moving on from that, in the wellbeing review, and I think it is also reference in the report produced following the disciplinary review, that's attached to Mr Porter's statement, one of the findings was that internal processes - that is the deploy of processes - caused as much mental harm to police officers as external trauma and there were recommendations that changes be made to internal processes to alleviate that. Are you able to talk about how or what internal amendments have been made with a view to addressing member support and welfare?---Again, your Honour, and I think for everyone who is listening, I think the implementation team and the rollout of that program is under way. I can't specifically address what processes that referred to, sitting here now, at short notice. But again, I am confident that the implementation team and the steps we are taking now will address the deficiencies of why we called for the review to make improvement for the wellbeing of the Northern Territory Police Force, Fire and Emergency Services.

THE CORONER: Are the reviews that have been conducted available to the members so that they can see?---Your Honour, as I understand it, on the documentations provided through our intranet site and through our communications there's no - it's, you know, I think - I've indicated it's trying to be a warts and all type approach, even on the document there there's a number of Beyond Blue statistical findings that are put out to indicate what we found. So again, I'm not, you know, I'm not trying to be difficult but it's my understanding it's communicated to those who participated in the survey and to the workforce.

MS OZOLINS: One of the things identified in the wellbeing review was that there's limited support for members when they're leaving the service. This inquest heard some emotional evidence from former Superintendent Scott Pollock about his experience when leaving the force after 38 years of service. Are you aware of whether that particular issue had been addressed in terms of providing members support when they are leaving the service or exiting out?---I think it is being addressed, your Honour. Yes, that's my understanding.

I'm sorry?---Yes, it's my understanding that is being addressed.

Are you able to say how that is being addressed?---I can't - specifically what steps they take but I do know through in terms of recognition, certificates from the Commissioner of Police, acknowledgement of service, broadcasts, a number of those things I see frequently coming through. I in fact attended a retirement service for a 38-year veteran of the force last week.

Are you aware if there are exit interviews for police, offered and conducted?---It's my understanding they are, your Honour.

A SPEAKER UNKNOWN: No sound on the live stream.

DR DWYER: I'm sorry, there's no sound on the live stream, your Honour. It looks like we will have to move to Plan B, which is to interpose Assistant Commissioner Porter, with my sincere apologies to Deputy Commissioner Smalpage and to (inaudible).

THE CORONER: Yes. I understand that those who still have to ask you questions, Deputy Commissioner would like the benefit of their examination being live streamed and I can understand why they would like that to occur and I really apologise that we are unable to continue with your evidence and complete it as efficiently as we would have like, but I understand that we can commence with Assistant Commissioner Porter's evidence and we will do that now if that is suitable?---Thank you, your Honour.

WITNESS WITHDREW

DR DWYER: Thank you, your Honour, and can I just reassure everybody the transcription service is working. Because without that we couldn't proceed at all. So that will be available for the need to review and we will be, of course, getting a summary of that interpreted, as usual, so that we can explain to community members what has been happening.

THE CORONER: Sure.

DR DWYER: Your Honour, the next witness will also be led by Dr Freckelton.

THE CORONER: Thanks. Assistant Commissioner, just take a seat when you're ready.

BRUCE PORTER:

THE CORONER: Dr Freckelton.

XN BY DR FRECKELTON:

DR FRECKELTON: Thank you, your Honour. Should we assume that when there is confidence that matters are up and running Mr Smalpage will take Mr Porter's place?

THE CORONER: Yes. I think when we're confident that it's up and running and at a convenient point in the evidence, we will interpose Deputy Commissioner Smalpage. But we will make sure it's at a convenient time. And how many people – I know counsel assisting is left for Deputy Commissioner Smalpage, you Mr Officer. Is there any - I think that - and maybe there might be something a little further from you?

DR FRECKELTON: Just a handful of questions. It's a couple of minutes.

THE CORONER: All right, and Ms Ozolins, do you have much to go? Just so we can get an idea of like when would be a convenient time?

MS OZOLINS: Your Honour, I only anticipate it to be another 10 or 15 minutes this morning.

THE CORONER: All right, thank you. Yes? Dr Freckelton?

DR FRECKELTON: Thank you, your Honour.

Mr Porter, would you state your full name again for her Honour please?
---Bruce Douglas Porter.

And you are an Assistant Commissioner with the Northern Territory Police Force?
---Yes, I am.

When did you commence your service with the police, Mr Porter?---On 3 July 1989.

So that heads you to being about 34 years?---Nearly 34 years.

And you have made three affidavits for the court in this matter, the first dated 13 July 2022, is that right?---Yes, that's correct.

The second dated 2 September 2022?---Yes, that's correct.

And the third dated 9 February 2023?---That's correct.

The contents of each of those affidavits are true and correct to the best of your knowledge and belief?---Yes, they are.

I am going to start by just asking you a handful of questions about your career in the police force. As you have said, you started in 1989. You have served in a variety of remote areas including, I think, in Tennant Creek earlier in your career, is that right?
---Yes, so I started my career in Alice Springs as a probationary constable.

Yes?---While I was based in Alice Springs I also went and served out at Yuendumu and Ngaliya.

Yes? You were a senior constable at Yuendumu?---I was. I was out there with Sergeant Wayne Puxty for a period.

Yes?---I also then I was promoted - so I spent six years all up in Alice Springs as a constable and a senior sergeant.

Yes?---I also then went to Tennant Creek as a divisional superintendent where I was in charge of all the Barkley and Central police stations and also remote experiences

I was the commander of Northern Command based at Katherine looking after all the police stations for the top half of the Territory.

And you've done the required anti-discrimination and the unconscious bias training?
---Yes, I have.

Now, tell her Honour a little more, if you would please, about your responsibilities as an assistant commissioner?---So my responsibilities are to drive the strategic direction of the agency in line with our Project 2030 ten year strategy.

Yes?---Is to provide the strategic oversight management and guidance to all those under me with my portfolio to ensure - - -

Tell your Honour about your portfolio?---Yes, so my portfolio is the Professional Standards Command, the College Command, and part of the college command as well just recently moved in there as Workforce Development, which had the recruitment, transfers, and promotions area. Also I – even though HR and wellbeing to not come under me I have delegation for the majority of the Commissioner's powers in relation to dealing with people within the HR while being especially in the inability and return to work type space.

(Inaudible) thinks of your responsibilities is relating to personnel, would that – generally from the start to the end would that generally capture it?---Yes, that generally captures it.

Did I interrupt you, were you going to add something else?---No, no.

Let's just go to your work with the Professional Standards Command. I think you had an initial period there around 2011 for a couple of years as superintendent, is that right?---Yes, I was there from 2010 to 2013. I went in as the superintendent for the Complaints Management Division, so overseeing the complaints against police portfolio, as well as I undertook a number of duties at that time as acting commander of Professional Standards Command.

And you returned to that area by virtue of your promotion to assistant commissioner?---No, I returned to that area as commander.

Commander, okay. Then assistant commissioner (inaudible)?---That's correct.

When did you go back as commander?---I went back into Professional Standards Command in – or towards the end of June 2021. No, sorry, 2020.

2020?---I was actually the commander of College prior that and I got transferred while I was on long service leave into Professional Standards Command. So I went in there in June 2020 and then I was there till about February 2021 and then I started undertaking duties as acting assistant commissioner.

Is it fair to say you have a particular interest in how the Professional Standards Command functions?---Yes, no, I have a fairly high passion for that area. To ensure that we have the professional standards and ensure the ethical culture of the agency.

By reason of your having been there in that period between 2011 and 2013 you have an informed perspective over something in the order 12 years. When you went back did you notice changes in relation to the Professional Standards Command?---Yes, there'd been a number of changes. The command as a whole had reduced in capacity.

Right?---So when I first was in Professional Standards Command we used to have a superintendent and a sergeant actually based here in Alice Springs.

Yes?---So we had an additional superintendent and there was that sergeant. We don't have those positions anymore, or that role down here in Alice Springs.

What do you think about that?---It was beneficial to have that office here in Alice Springs. I actually undertook that role for a period when I was senior sergeant down here and I've done it as acting superintendent. So I'm familiar with the role.

Yes?---It was beneficial to the force whenever something happened or there was misconduct you could be there straightaway to provide that guidance or undertake – or preserve evidence as required. Also to be able to provide guidance face-to-face to the managers of – of the police down here in Alice Springs and Southern. And you also had that consistent approach with agencies such as NAAJA – well, back then it was CAALAS. So CAALAS and the local community, because you were the one that was dealing with the complaints relevant to their area.

I think I've been hearing – been listening to at least part of Deputy Commissioner Smalpage's evidence. He has said that prior to the time that he started he identifies now that there was some real issues in terms of the quality of supervision and the function of the station at Alice Springs. If that's right would it be constructive to have that presence of PSC to give guidance and intervention as necessary in Southern? ---Yes, it is. So I remember when I was superintendent here I actually used to come across to the station and I used to participate in some of the meetings and provide guidance in relation to what's expected. I actually also used to go to some musters and talk about professional standards and what the requirements were. Because you were here face-to-face you were able to just come across and do that.

Yes. So were resources committed would you be in favour of reinstating a presence in Alice Springs?---Yes, I would be.

Now, you've mentioned then the loss of that office. What about other resources within Professional Standards Command?---Yes, so we also had a senior sergeant in professional standards who's sole responsibility was administration to make sure that the governance, the policies, the administration of the command were functioning and actually in line with our monthly meetings. Also we used to have two

positions which was funded through Commonwealth funding, where we introduced IPRO which was the replacement of the – back then it was called Ethical and Professional Standards Command – but their version of PROMIS. So they used to have a version of PROMIS which police use now for their nominal police database – we had our own version. So they were brought in where we replaced the ethical standards PROMIS with IPRO, which is now the case management system for professional standards. And we used to have two positions for that. One was the IPRO manager and one was the IPRO administrator. And now we only have the one position.

What does it mean to lose that additional support for a case manager?---The purpose of the IPRO administrator was to quality check data that was going into the system to ensure that it was put in properly, that we were getting good quality information to allow reports to be run. Also whenever one of them was away you always had another person there who had the expertise in the system. So even just recently our IPRO manager was on long service leave for a couple of months and we had to put a police officer in there to basically manage as best she could IPRO without the expertise in relation to that. So that then allows, you know, mistakes to be made and then when IPRO – our IPRO manager comes back she has to then try and catch up and go through and quality check everything. Also it's significant as in any changes that need to be made to IPRO where we are going to making changes to it when we do introduce a automated early intervention system, changes have to be made within IPRO to encapsulate that, which will take considerable effort to do.

If you were to estimate what depletion of resources you identified between your 2011 to 2013 period to what you've seen since 2020 what would you scope it as?---Overall it's not a major depletion of resources but it's where they've gone. It's where they've gone, to the critical areas of Professional Standards Command. So there's been a slight increase – you know, moving of positions of, one to complaints management division, one into the internal investigations division as investigators. But primarily that's it, so we've lost our capacity through local knowledge and undertaking investigations, especially outside of Darwin. We've lost our capacity to adequately manage or case manage our systems to the level that we should be doing. We also lost administration support. We used to have two administration officers. We've only now got one. And also we are lacking completely – well, not completely but we're lacking in our intelligence support. So we only have one intelligence officer for Professional Standards Command which makes it very – and when that officer goes away we don't have a replacement, we have to rely on - - -

And what's their job? What does an intelligence officer do?---So the intelligence officer does all the background work, running reports, doing analysis of searches on social media, for example, searches on our PROMIS database, searches on emails, searches on NTPFES personal drives that members have. There's also analysis of phone records, or they actually get our phone records for us to analysis. He also does all the integrity checking for probity, for other jurisdictions who, where members of Northern Territory police apply for other jurisdictions. He does all the probity checking for transfer and promotional panels, for award. So honours and awards, so medical ceremonies for people getting awards. So it's a big job just for one person

and when he's not available we have to go to the Intelligence Division to try and get support to cover us when he's away. So it reduces our capacity to actually do proactive analysis of things that we are facing. So for example, we could do proactive analysis of people and social media, we could do proactive analysis of PROMIS jobs to work towards identifying if there are any issues with a member so we can deal with it effectively early before it escalates.

Other police forces with which unfamiliar have resources within their internal investigations sector to do covert operations and investigation, do you have a sufficient facility to do that in the Northern Territory?---No, we do not have that facility. We have to rely on our crime covert operation.

Is that satisfactory in the circumstances?---No and then we have issues of – possible issues of confidentiality and breaches.

Now the Gelliott (?) report has identified a major issue with inadequacy of resources. Are you able to give her Honour any idea of what would be necessary in order to have Professional Standards Command undertaking all the tasks that it needs to do in an efficient and effective way?---So on analysis of – and speaking with Commander Gelliott, on analysis we believe it would be in the order of approximately around 20 extra staff to bring in a component of – well to bring in criminal investigations into the Professional Standards area, to also increase in our intelligence capability our database capability and also to be able to go into early intervention, because that will be time-consuming. Also we are going to be introducing, which is in my affidavit, we are going to be introducing drug and alcohol testing for police. So there will be a requirement for resource to be able to undertake that activity as well.

And is that a matter which is being canvassed with government in the usual way? ---Yes. We have canvassed with government.

No need to go any further than that, but that's a matter for submissions that are made by the Commissioner to government?---That's correct. And it will be a submission, a Cabinet submission, there'll be Cabinet and confidence at that time.

Now during the COVID period did the Professional Standards Command have particular difficulties by reason of personnel from that command being taken to undertake other emergency functions within the police force?---Yes, we did. We were the same as every other section, branch, command within the agency. Especially during the COVID-19 response where we had to do emergency lockdowns of communities, undertake duties at the Emergency Operations Centre, emergency duties at the Quarantine Centre. So personnel would be taken from every area to be able to do that and we did lose some staff for periods to undertake those critical community safety duties.

You've described the various functions of the Professional Standards Command. Have other areas come online as the responsibility of the Professional Standards

Command that were not its responsibility back in 2013, for instance?---Sorry, could I ask you to - - -

Yes. Are there new areas the PSC is taking responsibility for?---Yes.

That were not its responsibility back a decade ago?---Yes, there was. So back in 2020 PCS were – had taken over the responsibility of Police, Fire and Emergency Services investigations, which is unsworn investigations. That used to sit under HR or back then it was our Human Resources Branch. But with the machinery of government moves, our Human Resource Branch went across to a consolidated model under the Department of Digital – I can't think of the word off the top of my head.

(inaudible) yes?---But anyway, DCCD. And so we garnished two positions to go across to Professional Standards and only two positions we were able to use to undertake all unsworn investigations into disciplinary matters for our unsworn contingent. So we have, you know, around 800 unsworn staff as well as taking on the role of all the respect, equity, diversity type complaint matters.

All right. What about failed prosecutions, is that something that you have an involvement with? If so, can you explain it to her Honour?---Yes. So failed prosecutions was introduced after the Yuendumu shooting, so it was – I can't remember the date, it was around 2019 or 2020, I can't remember the date off the top of my head.

Yes?---Failed prosecutions panel or review panel was initiated to meet on a regular basis to undergo or review all noted prosecutions that had failed. And so that - - -

By failed, what do you mean?---As in failed as in it was – they – it was lost during a court proceeding either through some actions or non actions by police, through lack of evidence.

Yes. So charges that weren't appropriately drafted?---Yeah.

Evidentiary issues that emerged?---Yep. So all - - -

Preparation that was (inaudible)?---So all those type of things.

THE CORONER: Does it include withdrawn matters?---And withdrawn matters as well, yes, your Honour. So that panel consisted of myself then and still consists of the Commander of the Professional Standards Command, the Commander of the Judicial Operation Services, the Director or the Acting Director of Police, Fire and Emergency Services Legal, representatives from the Department of – sorry, the Director of Public Prosecutions from Alice Springs, Katherine and Darwin. So they'd meet – we'd meet on a regular basis, go through each individual matter and then if it was identified that there was an actual failed prosecution because of some identified issue relating to the police, that then went into PSC to manage. So it would be put into the PSC database, PSC would manage it, oversight it and send it out to

Commands as required. But first it identified any misconduct and PSC would (inaudible) to that as well.

So to summarise, an opportunity to learn from where things have gone wrong and also to take action every now and again where that's appropriate?---Yes. And fairly immediate action once the advice come back from the courts in relation to that failed prosecution.

So again, a significant commitment for PSC?---That's correct.

What about Command Management Teams? They were introduced, I think, around 2013?---Yes, that's correct.

Can you tell her Honour about those and what role PSC has in those?---So the Command Management Team general orders are actually owned by the Professional Standards Command. So Command Management Teams are fortnightly – so they're fortnightly meetings that are held within every police command. And it's to be chaired by – it is chaired by the Commander of each individual police command. The Command Management Team focuses on complaint against police investigations. So it focuses on areas that are within their command. So complaint against police investigations, internal investigations, if it's within their portfolio to investigate, any new complaints coming in, oversight or management of domestic violence incidents involving police members, investigations into the oversight of departmental (inaudible). So vehicle accidents involving police vehicles of a serious nature, monitoring good behaviour bonds on police members who are the subject of a good behaviour bond. And so there's a myriad of things that are within a Command Management Team that is reviewed or reported on every fortnight. The PSC or Professional Standards Command attend every single one of those meetings. So there's eight commands. So we basically spend or PSC, so we have a member from the Internal Investigations Division and a member from Complaints Division, they attend or spend two days every fortnight just attending those meetings.

And of course there are areas of legislative reform and policy which are relevant to the Professional Standards Command, is that something that takes up some time of the PSC as well?---Yes, it does. Also – it does because we haven't had or don't have a dedicated lawyer or legal officer. So most of the work gets done by PSC themselves and we put it through to Legal Services when they're available to review things for us in relation to those aspects. But – and it's made it difficult too as in when we do any sort of disciplinary hearings and also appeal hearings is we generally have to outsource for legal services in relation to that. So then you have the inconsistency of having different persons representing. You've got to provide or take more time to brief with your legal counsel on matters because of not having an understanding of what the ongoing nuances. So as an interim measure with that, I got approval from the Commissioner for 12 month funding in the interim, which is actually part of the Gelliott review is to embed a permanent lawyer within the Professional Standards Command. And we're currently using one who is attached to

the Police, Fire and Emergency Services Legal Branch at the moment but she is our dedicated lawyer at this point in time.

So that her Honour understands that and given all of the tasks that you've explained so far, how many staff are in the Professional Standards Command?---There's 19, being 15 sworn and four unsworn. Out of the 15 sworn there's one Commander, two Superintendents, two senior sergeants – I can't remember how many sergeants but there's a mixture of sergeants and constables.

One of the recommendations of Mr Gelliott is that there be a dedicated Assistant Commissioner to take responsibility for all these different functions in the Professional Standards Command. What is your view about the appropriateness of that?---I fully agree with that recommendation. So you can have someone who's dedicated overseeing which is essentially probably one of the most critical areas of the Northern Territory Police Force, to ensure that we do have a police force that is accountable, acting fair, has accountability. So every other jurisdiction other than Tasmania has the minimum of an Assistant Commissioner overseeing their areas. So we really do need or I believe we need to have that dedicated Assistant Commissioner who can be over the Professional Standards Command and also drive the continuous improvement initiatives that we need to drive.

So once again, that's not a decision that your Commissioner can make, it requires collaboration with government, is that right?---Yes, that's correct. Every CEO has a mandated cap on executive contract officers within their areas of responsibility.

So if there were to be an Assistant Commissioner with that responsibility, the cap would need to be adjusted?---That's correct.

With the relevant financial resources. Now you've mentioned early intervention as something that involves the PCS and which is important. Can you tell her Honour some more about that?---So early intervention is something every police jurisdiction is grappling with. Every police jurisdiction recognises the need to identify at an early stage any behaviours or performance of members to be able to identify early to take corrective action as required to then minimise or reduce any escalation. So – and every jurisdiction is struggling with it. So the Professional Standards Command are part of a national forum, professional standards forum and the Commander of the Professional Standards is also the Northern Territory Police representative on a newly formed group which was formed mid last year, national group, for that is undertaking – it's a working group examining early intervention and how an early – a standardised, for a better term, early intervention framework could be implemented across Australia. No one has the solution at this point in time because of the nuances of every agency and the ability for data collection. But having said that, we have – because we have identified if we get onto identify any behaviours of a member, we can get onto it early, we can then correct their behaviour so it doesn't escalate and so then it does not then lead into any formal discipline or higher level sanction or those type of things. So we kicked off or commenced – I shouldn't say kicked off – commenced an early – our own internal early intervention working group.

Yes. You refer to this at par 119 and following of your first affidavit.

Does your Honour have the three affidavits?

THE CORONER: I do. The first one?

DR FRECKELTON: The first one, yes. 119 and following, I think he made reference to.

But you said you started that, Assistant Commissioner?---Yes, that's correct. And the responsibility has been given to the Commander of Professional Standards. So she's the Chair of that working group. So far – so that working group consists of a fairly wide range of people. So it's chaired by the Commander of PCS. There's members of Professional Standards on there. There's representation from the Northern Territory Police Association. There's also representation from our Human Resources as well, Being Branch (?), because of, you know, the impacts of health and wellbeing that we want to introduce. And there's also a range of people across the agencies from different streams within the agency as part of that working group. So we're trying to get everyone's perspective on what an early intervention framework or system should look like.

And amongst the triggers for that kind of an early intervention with an officer, might that be a failure to wear body worn camera repeatedly?---Yes, that's correct.

Excessive – or exuberance in pursuit of suspects and a failure to attend to paperwork which is important, such as use of force forms and similar. Are those the sorts of issues that might trigger the involvement of Commands to try to intervene early to remediate the problem?---Yes, that's correct. So there's a range of things. So there's use of force reports, for example. Those who are involved in pursuits, so to identify if someone is obviously being involved in pursuits more than others.

On foot or in a car?---Primarily on – in a vehicle.

Yes, I see?---But also it takes into account things like a member's ongoing absence from work, taking personal leave, which could be the result of some activity in the workplace. So it'll cover off a range of these indicators and it's going to be designed so that there'll be automatic triggers, because it will draw data from everywhere. It will include drawing data from IPRO which includes any remedial advice or manager guidance or disciplinary action. We also at the moment have on IPRO our Health Recovery Unit matters. So that will link in. So it's to be able to – because at the moment everything is manual. So it is going to be designed or the intent is to have a design system that will automatically flag indicators to say that there might be some concerns with this member, you need to have a closer look at this member.

Because amongst other things, the sign is if there is a surprising number of issues of one kind of another arising in respect of a member, is that right?---Sorry?

There should be a warning light in effect if there is a surprising number of matters of one kind or another arising in respect of one person?---Yes, that's correct. So it will be like a green, orange, red stoplight type dashboard. The only automatic trigger we have at this point in time as some possible early intervention is currently within IPRO if a member gets three complaints against police within three months, we will get an alert. That is the only automatic trigger we have at this point in time.

There can be a correlation between health issues and performance and workplace issues?---That's correct.

And is that something again that it's proposed to look into as appropriate?---Yes, that is correct. Which is why our HR Wellbeing are part of that working group to see how it interacts.

With that - and if anybody else wants to they can with you, but without going into details, would this have been a constructive tool to have had, given that Mr Rolfe found himself with a number of matters that were arising in respect to him between 2017 and 2019?---It would've been, but on analysis of Mr Rolfe's - he didn't have too much that was recorded at that point in time, prior to - or recorded - or actions prior to 2019 - the incident.

Now, you've mentioned too - and we will come back to that. You've mentioned too, the health and wellbeing changes that are coming through in terms of the testing. Could you give a brief summary to her Honour of those changes for the course? ---For drug and alcohol testing?

Yes?---Yes, so - so we're the only jurisdiction across Australia that does not have drug and alcohol testing for police.

Why is that?---I can't really answer that. I don't really know the answer. It's been spoken about over the years but we have taken the proactive step that we need to be in line with other jurisdictions and also the incident, which you could classify as a critical incident, we didn't have the ability to test our police officers to make sure that there are no issues in relation to their ability to undertake their duty.

You are referring to the Yuendumu incident?---The Yuendumu incident - so any critical incident.

You're not suggesting that anyone was affected by - - -?---No, no, I'm not, but it is a tool - - -

But you weren't able to do the check?---That's correct.

By requiring them to submit to testing?---Yes, that's correct. So - so it is a tool that we are implementing to ensure that we do have a professional and ethical police force who are also obeying the law. So we have workshopped it - the legislation has been drafted. The general order has been drafter. It still needs to go back to the Northern Territory Police Association for further feedback because there's some - - -

There are some - shall we say - -?---There's some concern, especially in relation to the ability to test at remote police stations for example, because of the distance - tyranny of distance. So, but it's in its final stages. The office of Parliamentary Council, the legislation is going to be going there to hopefully be introduced some time this year.

Yes. So that will enable testing, for instance, after a critical incident, in relation to any alcohol in the system and also a variety of unlawful drugs?---Yes, that's correct.

So what sorts of drugs are we thinking of? Amphetamines?---No, so it will be tested - so everything that's within our *Misuse of Drugs Act*.

Right?---So as within our schedule, so - - -

So quite a broad - -?---So it's all the - all the unlawful or illicit drugs. It's not testing for those persons who are taking like prescription drugs, for example.

Prescribed medication?---Yes.

THE CORONER: You said that we were - or the NT was the only jurisdiction without this kind of regime?---Yes.

I assume the other jurisdictions have their own regimes and they vary in relation to how and when testing can take place?---That's correct, your Honour.

And there would be some jurisdictions that have stricter regimes and some jurisdictions that have more minimal regimes?---That's correct, and - - -

And where do we - where does this plan fit in that range?---It's about middle range. So we went, as part of analysing what we were going to be put in place for the Northern Territory. We have every other jurisdiction's legislation and also their processes and procedures. The one that we are primarily following, because of the size of the jurisdiction more than anything and also they use IAPro the same as we use IAPro, so it's all going to be recorded into IAPro. We primarily are following the Tasmanian model, to a degree.

DR FRECKELTON: And, your Honour, you will find reference to that in Mr Smalpage's affidavit - third affidavit - at 411 and following. Four page 3 (inaudible) and that as a matter that your Honour may recall was suggested for change by Commander Proctor.

Just going to that associated matter that you've identified to her Honour, what we are talking about is alcohol and illegal drugs, not prescribed medication. Just to confirm to her Honour what the situation is in terms of obligations of members to communicate to anyone, there is a prescribed medications or they having a health condition, which might be relevant to the performance?---Yes. So at the moment it's within our - I can't remember the exact name of the general order but it's a person

(inaudible) restricted - well, it's not general - it's currently a policy - policy as in you are to report it to a supervisor but it is going to be - it is embedded - or will be embedded - it's currently in the draft, alcohol and drug testing for police officers in the draft general order so it's actually specifically a direction - or will be a direction - within that general order.

So, and again, that issues in relation to required reporting about taking of medications which might affect performance or of having conditions which might affect performance is a matter which is being reviewed and is subject to appropriate consultation, is that right?---That's correct.

Your Honour, in terms of the matter that you raised, so various conditions which are in one jurisdiction or another, in this first note, which is an exhibit to the first Smalpage affidavit, provides material in relation to that. Presently to be followed up now but - - -

THE CORONER: Sure, but it's there.

DR FRECKELTON: It's a resource which we have endeavoured to provide, it's entitled, "Jurisdictional comparison drug and alcohol testing" and it goes through all of the jurisdictions in some detail. Just over four pages and it summarises the different criteria.

THE CORONER: Thanks, I have found that.

DR FRECKELTON: You told her Honour about the fact that the Professional Standards Command is no longer situated in Alice Springs - as well as Darwin. Is there a similar (inaudible) in relation to the Ombudsman's office?---Yes, there is.

They've moved away as well?---Yes, so when - when my first time in PSC is they used to be an actual Ombudsman's office in Alice Springs. It was actually based in the mall. It no longer exists. They also centralised and they only have the one office up in Darwin.

I'd like to go now to just a brief overview of the way in which complaints and also internal investigations are dealt with by Professional Standards Command, the Ombudsman's office and of course, internal commands within the police force. There is a document called "The Police Complaints Agreement." Can you tell her Honour what that is?---Yes, so the Police Complaint Agreement is a - primarily a MOU between the Northern Territory Chief of Police and the Office of the Ombudsman. So between the Commissioner of Police and the Ombudsman for the Northern Territory.

It is VP4 to the first Porter affidavit, your Honour, and it's dated 2014, is that right? ---That is correct. So it was initiated back then. It was put in place - it's the *Ombudsman's Act* 2009 came in in 2009. This was primarily a document to formalise - formalise because it was informal prior to that - to formalise the

processes between the Office of the Ombudsman and the Northern Territory Police in relation to how to deal or manage with complaints against police.

And that was initiated by then Commissioner McRoberts and Ombudsman Shoyer, is that right? Back in page 31 of that – you can take that from me as - - -?---Yep, okay. I was just having a look at the signature. I knew it was Mr McRoberts.

Yes, all right. So let's – there are two separate streams although in the end they have much in common, is that right, complaints against police and internal investigations, although there are some distinction factors?---Yep. So complaints against police are – the complaints made against police officers under the auspices of the *Ombudsman's Act* (2009). So that is when members of the public have issues or – some issues of how they have had the interaction with police. And so they'll lodge a complaint.

And that can go straight to the police or it might go straight to the Ombudsman? ---That's correct. Either/or. And we also have an online complaint – on the intranet an online complaint system, they can go through there too, but that comes to the police. Then you have the Internal Investigations Division which is primarily dealing with internal matters or internal investigations or even internal complaints in relation to the conduct of police officers. So that is done under the auspices of the *Police Administration Act* (1978).

And that might, for instance, include a situation where it comes to the attention of the police force without a complaint being made or without complaint yet being made, that there maybe something problematic in the conduct of an officer?---Yes, that is correct.

So that enables an investigating in effect of its own motion generated within the police force?---That's correct.

Now what is the role of the Ombudsman in oversight of these processes?---Well ultimately the Ombudsman is responsible for all complaints against police, because they are all managed under the auspices of the *Ombudsman's Act*. The Ombudsman, he has oversight responsibilities but also all complaints have to go to the Ombudsman's Office, they have to be assessed, analysed and then a determination is made as to whether the complaint will be accepted or whether it would be categorised to be dealt with at a certain level. And then once the determination is made that it is to be investigated, it will then be allocated back through to the Professional Standards Command to determine whether there'll be a Professional Standards Command investigation or if it's a lower level complaint, whether it will be going out to the Commands to manage that complaint. So they oversight the whole way. So they have access to our IPRO database as well. So they can monitor wherever an investigation is at. So the complaints come out, we do the investigations, they oversight. When it's a high level investigation the investigation report will be sent back to the Ombudsman's Office for review before any sort of finalisation action. And if they deem also that there's an inadequacy in

that investigation, they have the opportunity then to refer it back for further investigation.

Let's then delve into the process a little bit further. Contemplated that a complaint comes to the Ombudsman or to the police, it will then be sent to the police, I think, for an interim investigation so as to get a first idea of where it ranks in seriousness, so that the Ombudsman can be assisted to classify it with assistance of data provided by the police?---Yep. So - - -

So - - -?---Sorry.

- - - the police do an initial investigation. Can you tell her Honour about that?---Yep. So every complaint that comes in is subject to what we call a preliminary enquiry. So whether it comes in from our side or whether it comes from the Ombudsman, the complaint comes to PSC to gather data or do an analysis to be able to provide to the Ombudsman to allow them to – and we make recommendations also as to what we think how it should be dealt with – but ultimately it's the Ombudsman's Office who categorise what level of complaint. So we will provide any footage that we have, whether it be body worn video, whether it be watchhouse footage, whether it be counsel CCTV footage, PROMIS entries, custody health assessments, any notes or any data that we have from members, any other information that's provided that we have from the public. So that all gets assessed and it will determine if there's – well really it's assessed as to whether there's grounds for that complaint or not. And then a recommendation will be put, like I said, to the Ombudsman for them to categorise.

And we'll look at this in greater detail. There's a young 14-year-old Indigenous youth and we've been asked to refer to him as Master TG. Do you know the one I'm referring to?---Yes, I know the one you mean.

With a case such as that – we'll look at the details in due course – is it right that the PSC would assemble the relevant information and identify the issues which need to be looked at, often with an indication of where the PSC thinks it sits and send that material to the Ombudsman for them to classify?---That's correct.

Now how long a process is this initial preliminary investigation generally appointed to the profile?---We have ten days to report it to the Ombudsman. And it all depends – the timeframe depends on the level of data we have to collect, obviously.

And it goes to the Ombudsman and the Ombudsman undertakes the classification process and remits their view as to what category it fits into to the Professional Standards Command, is that right?---That's correct.

And again, without going into the details of it, the Ombudsman's Office generally does that within a few days?---That's correct, yes.

And when they do that and the Master TG has, as an example, is there still a facility in principle for the Professional Standards Command to go back to the Ombudsman

and say we don't agree with that, would you think further about this issue?---Yes. No, that is correct and I've actually done it personally myself a couple of times.

And then as a result of that process there's generally an agreed position as to what category of complaint it is?---Yes, there is. But ultimately the categorisation that the Ombudsman settles on is the categorisation to be dealt with.

Can we go into the various categories then please. There's one category which enables in effect a conciliation and that's called the complaint resolution process. Could you describe that to her Honour please and what kinds of complaints fit within the CPR category?---Yep. So a complaint resolution process – and I'll - - -

CRP?---So I'll refer to it as a CRP. I'll get tongue tied if I say resolution process all the time. It is for all those matters at a very minor level. And they are described within the Police Complaints Agreement as to what they fall within. But - - -

Just to give her Honour a - - -?---But they're things along the lines of rudeness, so the police officer was rude; inaction. So for example, the police officer is not returning calls of the complainant. Maybe even a little minor breach of a process. So it's just for all those little low level matters.

So how does that complaints resolution process work then in respect to those matters?---Yep. So it used to be a simplified process, not anymore.

Right. Yes?---Right. So – but it gets classified, it goes out to the Commands. So the current process is, it comes in, it gets classified, goes out to the Commands and generally it's then given to the supervisor of the member or if it's a complaint made about the supervisor then it will be obviously his boss, senior sergeant. So the supervised member to then do a conciliation between the complainant and the police members involved. And the outcome of that can be a range of things. Outcome of that can be a range of things as in an apology and it might be even just as simple as a misunderstanding between the – of the complainant of police processes or law. And it might be – they may accept that the explanation given to them, they'll accept that explanation. They may also accept that everything's been done and they're just happy for it to be brought to the attention of the member. And so it's dealt with at that low level. So it has to be an agreement, it can only go ahead if both the police member and the complainant agree to the process.

And roughly what percentage of complaints are dealt with in that way?---I don't know the percentage off the top of my head but it's – that's our highest category of complaints that are dealt with.

I see. Now there are two other categories which are generally designated category 2 and category 1. Category 1 complaints being the very most serious. Let's go to a category 2 first. Can you give her Honour an idea of what is typically a category 2 complaint and then explain what happens with a category 2 complaint?---It's probably easier if I explain category 1 and category 2 together.

All right?---And again the definitions are under the Police Complaints Agreement. They're not very clear definitions. But primarily a category 1 complaint is the highest level of complaint which is for those matters that are deemed or the allegations are deemed that they're of very serious misconduct or amounts to maladministration. A category 2 is for all those complaints that aren't minor, as in could be dealt with as a CRP, but don't meet the threshold of a very serious allegation of misconduct. So it's within that range. So basically, it would involve excessive use of force, it can involve not following policy or procedure. There's a vast range of reasons why – for complaints that will fall within a category 2.

Your Honour, the categories are designated at par 11.2, page 11 of that agreement. You will see the CRP process at 11.3. And then you will see the designation of category 2 investigations at 12.2 at page 14. And category 1 investigations 12.3 at page 23.

Now sorry to have interrupted you, Assistant Commissioner?---No, it's all good.

So you've identified a distinction between, in effect, 2 and 1, but 1 complaints are the very most serious. But some of the category 2 complaints are quite serious, are they not?---They can be quite serious, yes.

So who investigates these?---So the same process is with every complaint, all the preliminary enquiry is done, all the evidence is done. The categorisation comes back from the Ombudsman. If it's category 1, PSC always do the investigation.

Yes?---If it's a category 2, most times PSC does the investigation but if it's deemed that it's a low level category 2, so there's only like one or two complaints or allegations, and the evidence is not really showing that it's occurred, those matters go out to the Commands to investigate.

Can the Commands send the matter back to PSC if they become uncomfortable for any reason about their undertaking the task?---Yes, they can. And also even when we do an investigation, it doesn't happen often, but if we determine that the level of misconduct that we're identifying is of such a serious nature, we will also go back to the Ombudsman to ask for a reclassification to category 1. But in that case we'll already be initiating disciplinary action pursuant to part 4 and the Ombudsman will just defer the investigation because disciplinary action has already commenced.

Now without getting too far into the legislation I'd like to ask you just a few questions about the relevant sections.

May the witness refer to a copy of the legislation to answer these questions, your Honour?

THE CORONER: Sure.

DR FRECKELTON: Does your Honour have the *Police Administration Act* somewhere at hand?

THE CORONER: I'll dig one up.

DR FRECKELTON: Now if it is concluded that a category 2 matter or a category 1 matter appears to have been made out, what is the process? Is the member required if it is reasonably believed that they've committed a breach of discipline, to warrant action being taken against them, to respond to such a matter?---Yes. So - - -

Walk us through the architecture of that if you would?---Yes. So to commence any disciplinary action the very first point that is undertaken is the issuance of a notice under s 79 and 84F of the *Police Administration Act*. So that notice will detail breaches of discipline as outlined within s 76 of the *Police Administration Act*. So that breach will identify the section of the breach as per s 76 and the notice will provide the particulars of the breach itself, so the allegations of the breach.

And the options of what can be done if the Commissioner forms the view on reasonable grounds that there has been a breach of discipline as set out in s 84? ---That's the – that is the full range of penalties that can occur, yes.

Take no further action; counsel and caution; cause them to be formally cautioned; or charge the member with a breach of discipline?---Yes, so it's not quite that simple. So - - -

All right. It looked pretty good looking at - - -?---I know. So the 79 notice is issued alleging the breach. The member has seven days to respond. So they have the procedural fairness to provide a response to that notice. Then there's a process. So if they admit to the breaches there are certain actions that the prescribed member can immediately take. Which is if he – if the explanation is reasonable and it is determined that the breach actually did not occur, it could be take no further action. Or if there – they may admit but they've got reasonable grounds to as to why, they could take no further action or do counsel, caution or do a formal caution in writing.

And is that s 81?---It is s 81, yes.

And the more serious?---Yep. Then if they determine that the level of conduct that has occurred is – and that the punishment of – not punishment, but penalty that is the appropriate penalty for that type of misconduct is above their delegation to issue that penalty, they will then refer it to a higher level prescribed member or the delegate of the Commissioner to make that determination. And so the police regulations actually determine what levels of outcome that a prescribed member can do. So then if the member does not admit to the breaches or does not respond, you then can go to – sorry, an investigation then is initiated, a formal investigation under s 81 I think it is, off the top of my head. I keep getting confused with all the investigations. So sorry, no, it's s 82.

82, yes?---Investigation is undertaken. Then again at the end of that investigation if the prescribed member is of the view that the conduct is still being committed and

find that the breaches have occurred, again he can then also take – which is under s 84 of the *Police Administration Act* – undertake or provide to take no further action, counsel and caution the member or cause the member to be formally cautioned, or if it's above that level, the person – the member then has to be charged. So it then goes to a charge for – to go to a disciplinary hearing.

A charge of a breach of discipline is s 84A?---That's correct. So - - -

And then there's - - ?---When there's a charge there's a prescribed member which is generally the rank of a Commander.

Yes?---Is allocated as the hearing officer. And that prescribed member then will undertake that hearing.

And s 84A – sorry, B, prescribes the way in which such a hearing is to be conducted?---That is correct. And then at the conclusion of that hearing if the breaches are still found, the prescribed member, or the hearing officer, if it's within his delegations for what he considers is the appropriate penalty to give he can provide that determination or outcome. Again, if he believes that it is not within his delegated powers, or delegated penalties, he then provides a report to the delegate or the Commissioner for the delegate Commissioner to make a determination of what an appropriate penalty or outcome should be.

And might that be an assistant commissioner such as yourself?---Yes, it's generally myself as assistant commissioner at this point in time.

And when we're talking about the form of penalty being above a prescribed member is permitted to do it may well be a commander? What sorts of penalties are we talking about?---So as a delegate of the Commissioner I had the full range of penalties right from take no further action right through to dismissal or termination from Northern Territory Police Force.

I'd like to one other route in all of this, please, and that's s 78?---Yes.

Section 78 that is entitled dismissal and it enables a member to be dismissed immediately from the police force where the Commissioner is of the opinion that the member has committed a breach of discipline and it is in the public interest that the member be immediately dismissed, and it's taken into account the responses of the member that has been invited to provide a response under s 79?---That's correct, yes.

And are there delegations in place for that kind of dismissal to be done by a deputy commissioner or an assistant commissioner?---Yes, there is.

All right. And are there some occasions when this immediate dismissal part has been exercised?---Yes, here is. So it's a very quick process, this one.

So the member needs to be given seven days' notice and then there needs to be digesting of what the member's had to say, but reasonably promptly thereafter a s 78 consequence has the potential to follow?---Yes, that's correct. So these are for, like I said – or as you indicated – matters of such serious misconduct that it is in the public interests for that member to no longer be a member of the police force. To be able to initiate it is the same as every other breach of discipline, there has to be a s 79 84F Notice alleging the breaches. They have seven days to respond. Then on receipt of the response it's assessed and then if it is determined that the breaches are still at that threshold the member will then be given a – it will be referred to the delegate of the Commissioner and the delegate of the Commissioner will then provide his opinion and a Notice of Intention to the member where it is explained by the delegate that it is his opinion that the member should be dismissed from the police force. And that member, again, is provided another seven days as procedural fairness to provide a response into the opinion and intention of the delegate and to also avail that member further opportunity to provide any further information for consideration. And then at the end of that seven days upon that response the delegate of the Commissioner then fully assesses the matter in its entirety and if he is still of the opinion – he or she – is still of the opinion that it is a high level threshold and that on the balance of probabilities that breaches have occurred that person is then likely to be dismissed immediately.

Now, we've heard already in this hearing about the provision of remedial advice. Where does that fit into what you've explaining to her Honour?---So I've heard through the inquest on and off remedial advice being referred to as a disciplinary outcome. It is not a disciplinary outcome.

You've discussed this at par 58 and following of your third affidavit, is that right? ---Yes.

Let's track through, Assistant Commissioner, please. You've explained that it's not a disciplinary outcome. What is it then?---So remedial advice as in – it's in the word remedial as in it's a remedy. So it is for – the intention is for any sort of minor matters, whether it be performance matters, behavioural matters, or even really minor – really minor misconduct matters – is the opportunity – so this is where it works in with early intervention – so it's an opportunity for it to be identified, it's to be addressed, should be addressed immediately by the supervisor then where they have a conversation with the member about what the issue is to provide guidance and a structure to that member on how they can improve or even remind them of their obligations of certain things so that the improve, so that any further behaviour or performance, or misconduct does not escalate.

If they're described as a formalised process of mentoring would that capture it? ---Yes, it's a managerial tool. So when you're managing people, people need to develop, they need to learn and if they make mistakes – if they make mistakes they need to be able to have that conversation to learn from those mistakes.

Now, what her Honour knows from this hearing – and I'm going to ask you about this to do with specific issues arising out of matters involving Mr Rolfe and others – is

that remedial advice has been utilised as a response in respect of some more serious matters when other options have not been available?---That is correct.

Talk that through with her Honour, if you don't mind?---Yes, so - - -

We'll go into details later, but just in principle, please?---So in principle when something is identified or discovered, as in misconduct, there's a statute of limitations placed upon that.

Section 162?---Section 162 of the *Police Administration Act*.

Yes. It might be useful to go to that because its provisions are important and there are – is it fair to say that they're a real problem (inaudible) Professional Standards Command?---Yes, they are.

All right, so going to 162 it's headed Actions and Prosecutions to be Commenced within Two Months?---No, no, it's actually once - - -

That's its heading?---That's its heading, yes. Sorry.

Yes. That's fine. So talk us through the practical impact of s 162, and when you've done that I'll ask you how that ends in provisional remedial advice as a suboptimal option on occasions?---Yes. So the relevant parts of s 162 is 162(6) onwards which relates to action under pt 4 of the *Police Administration Act*. So when a act or omission is discovered action has to be taken, as in disciplinary action has to be taken within six months, as per s 162 of the Act.

Yes?---So that means that everything has to be done primarily within that six months right up to if you go on certain legal advices. So there's a number of legal advices around this.

And there's a Supreme Court decision from Southwood J?---There is. So there's a Supreme Court decision from Southwood J which changed the landscape for professional standards at that point in time, where an action was always utilised as being the issuance of a s 79. Whereas, the landscape changed with Southwood J as primarily here saying that the action, if you haven't done anything up to, is the laying of a charge.

The laying of a charge is - - -?---Laying of a Supreme charge.

So you had to get to that point within six months of the infraction having been discovered?---Yes, unless you get approval for extension.

We'll come to that in just a moment. So that's the quite demanding imposition imposed by s 162(6). However, there is the potential, as you say, for an application for extension of time to the Commissioner or to a Local Court judge, is that right? ---That is correct.

Tell her Honour about that, if you don't mind?---Yes, so you have the avenue to make application for extension of the investigation and that's where there is also confusion or misinterpretation, or different views in relation to Southwood's J decision. So the investigation, if you follow Southwood J, and I may be wrong on my own interpretation – follow - - -

We won't get you to do legal interpretation of it because it's challenging enough. But as a challenge for Professional Standards Command, a great deal needs to be done within the six month period and then there are issues as to the time at which the extension application must be made, is that right?---That is correct.

That's probably sufficient for present purposes. And so the extension application is covered by s 162(7) and if it goes to a local court judge, s 162(10) provides the factors which the judge must have regard to?---Well (10) actually applies to both the Commissioner and the judge, yes.

You're quite right, the Commissioner and the local court judge?---That's correct.

They've got to consider the complexity of the investigation, that any unforeseen delays that have occurred and any delays caused by the member?---That's correct.

Amongst other things?---Amongst other things.

So that's the general architecture of the process. And if, for instance, there is noncompliance with that and for instance, the charges are not brought within a six month period or the extension is not obtained within the relevant period, there are real limitations in terms of what can be done with a member?---Yes, that is correct. You can't take any formal disciplinary action.

So how does remedial advice fit into that scenario?---So remedial advice – and there's also a s 14C which we'll get to – but remedial advice falls in that it's an avenue to again raise with the member, even though we can't take formal disciplinary action, an avenue to provide them guidance and advice of where they've gone wrong, how they can learn from it and those type of things.

Now for outsiders who are cynical about it, they might say that's a mere slap on the wrist. Is that how it's regarded within the police force?---No. It's not a mere slap on the wrist, but we're limited because of legislation. But it is an opportunity, especially in that regard where the supervisor or manager or even Professional Standards for that fact, can really have an affirmative conversation with the member in relation to their behaviours and their conduct to – so that they have no miscomprehension of what their obligations and responsibilities are.

And is it recorded?---It is recorded. It's recorded on IAPro which also then when we do deal with disciplinary or even – it'll – which will also trigger for early intervention once we do get that fully operational, is that remedial advice, managerial guidance under 14C or any other behaviours of members can be taken into account when you

are looking at past behaviours of members when you're making a determination for a matter that – another matter of formal discipline, for an outcome.

Thank you.

THE CORONER: Can I just ask – and sorry, this might be too much detail. Where you've had the more serious matter that hasn't met the time limitations and you'll then give remedial advice, you say that's recorded on IAPro?---On IAPro.

But where it goes directly for a more minor matter and it's dealt with through remedial advice without the disciplinary component, is that recorded on IAPro? ---Sometimes it's not your Honour. It depends – it relies on supervisors and managers when they give remedial advice for making a notation through what we classify as Blue Team, which is the web interface into IAPro. So if they're given remedial advice they should be putting on a Blue Team job, recording their remedial advice, that then goes into IAPro. But that is dependent on sergeant, supervisors at the time.

DR FRECKELTON: And is work being done to try to ensure that that provision of remedial advice at Command level is placed through Blue Teams onto IAPro so that there is a formal record in all cases?---Yes, it is. And it gets raised at the Command Management Team meetings and it's also is part of the PSC session that's part of the upcoming sergeant development course, which the first one kicks off on 13 March, to reiterate those requirements. And it will also be as part of – because we're currently redrafting the Professional Standards General Order – it will be embedded within that general order.

Has the matter that her Honour's just raised with you, though, been a deficiency in terms of PSC being properly notified of what's been done at Command level?---Yes, it has.

Going to the provision of remedial advice then - - -

And I'm conscious of the time, your Honour. There's just one more matter I'd like to complete before we have our break, if that's all right.

THE CORONER: Sure.

DR FRECKELTON: When remedial advice is administered it's done orally or in writing or both?---It can be both. It can be both, but generally if it's a more serious remedial advice it will be done by Professional Standards and we always follow up with an email or writing of their having received the remedial advice and their acknowledgment of getting the remedial advice.

Are there times when a member is informed in advance in writing of what the remedial advice will be and then the oral session takes place a little bit later? ---Yes. No, that occurs as well. Especially if a member's on leave or at an absence.

Is this process an effective one, in your professional opinion?---Yeah, no, I believe it's an effective process, especially if it's done early in the piece. Because - - -

You mean early in the member's career or promptly after - - -?---No, not early in a member's career. It should be when something's identified it's dealt with early when it's identified because that then corrects or rectifies any further ongoing behaviour. The later that you leave it, obviously you're allowing that behaviour or performance to continue.

And potentially to entrench as a behaviour engaged in by the member?---That's correct.

And others with whom they have contact?---Who may believe or agree that that's acceptable behaviour because it's ongoing.

So again, this emphasises how important early - - -?---Early intervention is, yes.

Now you've mentioned – so remedial advice is outside the disciplinary framework but as you say in your par 65 of your affidavit, it may constitute a basis for further action if the member, for instance, repeats the behaviour?---Yes. So it can be bumped up to a s 14C. But s 14C are primarily for – so this is where you need to delineate. There's a s 14C - - -

Let's go to 14C then?---Yep, under the *Police Administration Act*.

Yes?---So it is entitled "Disciplinary procedures".

It is. So how does that fit with part 4?---Yep. So it's outside of the realms of part 4. Part 4 are only for serious breaches of conduct. 14C is the ability for supervisors, managers to counsel or caution members for minor breaches of discipline.

How is this different from remedial advice?---Because remedial advice can be given just for performance issues that have nothing to do with conduct.

Yes?---So – and if members are ongoing – so if you're talking about remedial advice for your members performance, so their continued performance, then you'd be going down a performance management path. Whereas this escalates as in with discipline as in you've committed a minor breach of discipline, we're counselling and cautioning you now and it's actually recorded as a – we record it in our system as a category 2 discipline matter.

So this is a potential outcome from a category 2 matter?---Yes, it is.

And is it understood generally within the force as a more serious outcome than remedial advice?---Yes, it is.

And is it described sometimes as managerial advice?---Yep. So the terminology for it is managerial guidance.

Managerial guidance. But it – can it comprehend written cautions?---Yes. So all our 14Cs as per our Standard Operating Procedures is to be done by writing.

In writing?---That doesn't stop the – so you still have the conversation.

The conversation?---But it's done in writing and it's a document and it's put on document and both the member and the person issuing the caution sign that document.

And that most assuredly would be taken into account on future occasions if any member gets into further trouble. For instance, in a part 4 sense?---Yes, that is correct, and so I give example a member constantly not doing body-worn video.

Right?---All right. So the first or second time, the member will get remedialised because sometimes they have accidentally not turned their body-worn on due to circumstances. But they'll get remedialised, but then if there's ongoing non-compliance and deliberate non-compliance, you'll be escalating it through 14C, and then if it continues, through formal discipline.

Thank you, that's very helpful. Was there a period of time when s 14C was not being utilised by the Force?---Yes, there was. So back in 2017, I think it was around August 2017, the previous Commissioner, he took away the ability to apply s 14C.

All right, and just to cut through it, has the current Commissioner reinstated the use of s 14C?---Yes, he has, and that occurred mid-last year.

Do you have an opinion based on your experience about the utility of that?---Yes. No, I agree with s 14C, and it's a formal record of that member getting the Council caution, and it's a more formal sense or way of ensuring that the member have full understanding and obligation of what their responsibilities are as a police officer in relation to doing their duties.

And has s 14C since its reinstatement been utilised by yourself as the Assistant Commissioner with oversight of a PSC on a number of occasions?---I don't use 14C.

You don't do it?---No, but 14C - - -

It's the next level down?---It's the level down.

But is the Commander using it?---Occasionally, depending on the rank. So 14C doesn't need to be a prescribed member. So I'm the part 4 prescribed member senior sergeant and above.

Yes?---So Senior Sergeant and above can take formal action against a serious breach of discipline. Fourteen C allows even sergeants to be able to undertake or deliver 14C if they believe it's at that requirement. But our process at the moment is

if you don't deliver 14C, it needs to go through PSC to review first before you deliver that 14C.

And is that to check and balance to make sure of consistency and appropriateness?---Yes, that is correct.

THE CORONER: Does it have to go through that whole s 79?---No.

No?---No, no.

DR FRECKLETON: No, because it's outside the disciplinary process,

THE CORONER: Yes?---So it is for when you identify a matter then and there. It's above remedialise, but it's not at the level of part 4. The supervisor can take that managerial guidance action with that member then and there.

But before they take it, they have to check through you?---Just, yes, to make sure that it is at that level obviously.

Right.

DR FRECKLETON: And that it's suitably framed?---Yes, and every single 14C does go on the Blue Team, and IAPro.

Your Honour, I apologise, we've gone over schedule a bit. But would this be a convenient time to stop?

THE CORONER: Yes, and I'll take a 15-minute break.

WITNESS WITHDREW

ADJOURNED

RESUMED

BRUCE PORTER:

DR FRECKELTON: Thank you, your Honour.

XN BY DR FRECKELTON:

DR FRECKELTON: Assistant Commissioner, you've given evidence about the requirements under s 162 and the timeframes imposed by that for the PSC. What difficulties do those timeframes generate for PSC to do its work?---It's very difficult. It creates difficulties especially if it's a complex matter, your Honour. Because the time that is required to especially investigate complex matters. When you become aware of a very serious matter, you do the investigations. Well the timeframe is, especially if it comes in as complaint against police to start off with. The complaint comes in. A preliminary investigation is undertaken. It then is sent over to the Ombudsman's Office, which if it's a complex investigation could take up to ten days. Then if it is a complex investigation the Ombudsman do a fairly thorough assessment before they categorise. That could take up to five days to come back. It comes back through the PSC and then you undertake investigations which includes a range of things, as in sourcing further information, trying to locate the complainant, if required, locating witnesses, if required, relying on other entities to provide you information such as shop owners or service stations to provide you footage. So there's a range of investigative practices that need to be undertaken. And then there also then needs to be, if you need to determine it at that point in time, interview of members or witnesses, especially under the auspices of s 79A of the *Police Administration Act* where you can direct a police officer to provide information or provide an account. Then you give a s 79 notice. You have seven days for a response for that 79 notice. There are occasions, especially if there are some medical concerns around a member, where a request is provided for an extension to provide a response.

And matters which may need to be followed up from what's said by the member? ---Yep, that is correct. And so then you also determine on that response if you need to do further investigation. You do a notice of intent to investigate. Then you make a decision on all that. Then you have to, if you're not taking action at that point in time, if the member hasn't admitted to the breaches, then you have to get to a stage of going to a disciplinary charge. And that has to be done within the six-month timeframe, if there's no delays.

Now in broad terms the Gelliott report has recommended some streamlining of procedures and some adjustments to the requirements of time limits. Are you supportive of those changes?---Yes, I am.

But – that's probably all it does say.

Now your Honour, I propose now to move to the particular complaints and issues that have arisen in respect to Mr Rolfe.

THE CORONER: Sure.

DR FRECKELTON: The Assistant Commissioner and those assisting him have generated two documents, two tables in relation to these, and opponents have been provided with copies of those. Assistant Commissioner, do you have a copy of those two documents? The first one a 10-page document in relation to the various matters involving Mr Rolfe?---Yes, I do.

Are the details in that true and correct so far as you know?---Yes, as far as I know. Yes.

And is there a second document, a table of remedial advice provided to Constable Rolfe? Again, is that correct to the best of your knowledge and belief? ---Yes, to the best of my knowledge.

I'd like to tender those, your Honour.

THE CORONER: Yes.

DR FRECKELTON: Thank you.

THE CORONER: Are you happy for them to be given an exhibit number?

DR FRECKELTON: Yes, thank you.

THE CORONER: Sure. It'll be the next exhibit number.

EXHIBIT 23 Matters Relating to Mr Rolfe, and Table of Remedial Advice

DR FRECKELTON: Now, you have those available to you right now, Assistant Commissioner?---Yes, I do, thank you.

Let's just go to the larger document if we could, and just track through the various columns of that so that they're accessible for everyone at court. The first one identifies the incident, which is in bold, correct?

THE CORONER: Exhibit 23, thank you.

DR FRECKELTON: So that's the first column, is that right?---Yes.

The second one gives a general description of what is said to have occurred, is that right?---That's correct.

Members are identified in the third column?---Yes.

The source of the issue is identified in the fourth column, which is for instance, Mr Barram's complaint against police, is that right?---That's correct, yes.

The next one deals with whether it constitutes excessive force?---Yes, that's correct.

The next one refers to your own affidavits and annexures?---That's correct.

And the final one summarises how it happened?---That's correct.

Now, I'm going to go through each of the incidents that I've referenced to this table which we hope will be convenient, and also by reference to what is in your affidavits. And I will give minimal attention to those matters which are not yet finally resolved. (Inaudible) and therefore not found resolved. Let's start with the Bojangles matter. Are you familiar with this one?---Yes, I am.

Just give a brief description to refresh everyone's memory of what that relates to, please?---So it was an incident that two members attended, Constable Rolfe and Senior Constable McCormack I think his rank was at the time. They attended at the Bojangles' in response to where they – a fight and they observed two males throwing punches at each other.

Yes?---On the police approaching one male has run off and he was pursued by Constable Rolfe and where he was subsequently apprehended and taken to the ground.

And Mr Barram reviewed this and you subsequently have reviewed it, is that right? ---Yes, that's correct.

As have members within the Professional Standards Command?---That's correct.

And Mr Barram formed the view that the use was – of force was excessive and that it would be preferable for the man not to have been pursued. Now, this is one where you have a somewhat different view, but that's on a spectrum, isn't it?---It is.

What's your view say?---So on the assessment of Senior Sergeant Barram – I'm not taking anything away from his assessment – is it was his view that it was excessive because of the level of the outcome for the offender. I don't take that view because the police members came across a – persons who are engaged in physical assault, for a better term, at that point in time and they don't know what's in the mind of the members at that point in time. But there are offences being committed, an offender has run away, you know that offence has been committed but you don't know the extent of the offences at that time. It could even be an assault, you don't know. The offender, because he was running away, was apprehended and force was used. Without body worn video footage – because there was no body worn video footage available to make an assessment – you have to take the words of the member. The member at that time is, "I couldn't fully in myself ascertain that it was not reasonable and necessary in the circumstances just because of the outcome of a ticket to the offender".

So is the ultimate outcome that the allegations was not substantiated?---(Inaudible) -
- -

Not the allegation, the - - -?---The level of force used.

The level of force was not found - - -?---To be - - -

- - - on the evidence available to be excessive?---That is correct.

Nonetheless, there was an issue in terms of this absence of body worn camera footage, was there not?---That is correct.

And was Mr Rolfe given remedial advice in relation to that in the middle of last year?
---Yes, he was.

And has he also been told that he's going to receive remedial advice when he's available in Australia about a variety of matters in terms of the way in which he makes decisions and uses tactics in apprehending persons – that he needs to speak further with - - -?---Yes, so this is in relation to a number of – a number of matters in relation to Constable Rolfe, as in how he is apprehending people. So he – because he hasn't been in the workplace also for a suitable period of time there's a requirement for him if he does come back to the workplace to undertake retraining again in relation to operational safety training and tactics. And that will be an opportunity to reaffirm with him the actual requirements and best practice of using force.

Including by reference to this incident?---That is correct.

Let's move to the next one then, please.

THE CORONER: Before we do, so this is an incident that occurred on 2 April 2017?

DR FRECKELTON: Yes.

THE CORONER: And remedial advice is given on 26 July 2022?

DR FRECKELTON: Yes.

THE CORONER: So that is an example of a failure to identify and intervene at an early stage to try and rectify behaviour?

DR FRECKELTON: Assistant Commissioner?---Yes, no, you are fully correct, your Honour. It should have been dealt with by a supervisor at that time when reviewing use of force, that body worn was not issued – was not activated. It was identified and remedial advice wasn't given at that time. So this – in this matter of course it was identified by Senior Sergeant Barram through his review of all use of force matters relating to Constable Rolfe. It was further reviewed and it was identified that body worn wasn't used. And this is really – that was really the only real opportunity

that was able for Constable Rolfe to be given remedial advice because he was on suspension right through until his trial.

THE CORONER: All right. But this matter, was it the subject of a use of force report?---Yes, it was.

So given that it was a use of force report at the time it should have been reviewed? ---Yes, that is correct.

Was it reviewed?---Use of force report was reviewed. There's no evidence – yes, sorry, the use of force report was reviewed.

This use of force was reviewed at the time, 2017?---I can't remember off the top of my head but it was at the time or immediately after, yes.

And it wasn't identified at that time that the body worn video had not been activated?---Not by the sergeant, the supervisor who reviewed the use of force, that is correct.

DR FRECKELTON: Now, should that have been identified by the sergeant who reviewed it?---Yes. Yes, it should have been and he should have been given remedial advice at that time.

So is this the kind of inadequacy in response and supervision which has been targeted in recent times by senior members on the force to try to ensure that it doesn't recur?---Yes, that - - -

That supervision is more informed, more attentive, and more effective?---Yes, no, that is correct. We have put processes in place. We have reminded supervisors of their obligations. We have put directions out through Broadcast and other mediums of the – that there is a distinct requirement they have to review the body worn video of any use of force, and that has to be recorded in the use of force report. And that if there is no body worn what action that they have taken in relation to that body-worn. And that is also currently being embedded as a specific order within our re-draft of the General Order, Operational Safety and Use of Force, where it is a lawful order that supervisors has to undertake that activity when their doing use of force. And it is also part of the Sergeant Development Course. Where there is a specific session in relation to use of force, assessment use of force, and requirements.

THE CORONER: And was this reviewed by – the use of force in relation to this matter, was that reviewed by a sergeant or a senior sergeant, at the time?---I'd have to go to my affidavit. I know it's minimum of sergeant.

And has there been any remedial advice or anything else taking in relation to the person who originally reviewed, but failed to identify, that the body-worn video was not used?---No there wasn't your Honour.

DR FRECKLETON: Can I take you to par 47 of your first affidavit, please Mr Porter?---Paragraph - - -

Par 44 and following, you've addressed the Bojangles matter. And that at par 47, you identified that it was the patrol sergeant who reviewed the matter. And then, at par 48, you note that the Divisional Superintendent also reviewed the use of force, and based on annotation which is referred to?---That is correct.

THE CORONER: I assume the same response in relation to remedial advice would be for the Divisional Superintendent, or is there somebody else?---Yeah, for not dealing with the inactivation of body-worn, yes that is correct, your Honour.

So there wasn't any remedial advice?---I don't have any record of remedial advice being provided, your Honour.

DR FRECKLETON: But if this happened today, what – what would occur, in relation to the sergeant and the superintendent?---Yep, no action would be taken against the sergeant or superintendent. And I've put previous examples in my affidavit of where action has been taken against supervisors. Because that – t that is why we also have implemented, so as parts of this process as well, we have implemented review through our Operational Safety Section of SMEs, reviewing our use of force - - -

SMEs, subject matter - - - ?---Subject Matter Expert. So they are trained, qualified, operational safety– operational safety training tactics instructors.

Slowly, Mr Porter?---Yep, I know.

It's all right?---And so they are reviewing, as part of that assessment as well, the assessment by the supervisor or the sergeant or – sorry, the sergeant or senior sergeant. And if they identify an issue, they are reporting it through to Professional Standards Command, on Blue Team, to be addressed.

So this is the person in the college who's reviewing such matters?---That is correct.

Thank you. Yes, moving on to the second part, which is the - - -

THE CORONER: Just before you do.

DR FRECKLETON: Yes.

THE CORONER: So the purpose of this, is to bring everybody up to speed with the expectations, the policies, and the procedures, in relation to use of force, and how that's to be managed and reviewed?---Yes, that is.

And at this stage, every use of force is going through to the college to a subject matter expert, to ensure there is a consistent understanding and application by all the sergeants and senior sergeants, when they're carrying out the review task? ---That is correct, your Honour.

Right, and eventually, one would hope, that rather than having every single one reviewed, there would be – you would be satisfied that there was consistency, and maybe you can reduce the number that are reviewed, but you might have some continuing process in place, to spot check, in the future?---That is correct, your Honour. So this is about realigning, re-educating the agency, to ensure that we have proper government's processes and checks and balances in place, so that we can identify any issues, as they emerge. The previous instruction with the use of force, didn't have the actual requirement or direction, that you had to review body-worn video. That is now embedded.

DR FRECKLETON: And the role of the subject matter experts, your Honour, is explained by Mr Porter in par 125 and following.

THE CORONER: Sure.

DR FRECKLETON: You've described a set of checks and balances in effect now, in relation to the obligations of supervisors, that in first instance, (inaudible) might have been, and also the college – and also the college person to identify and respond suitably to use of force. How is that use of force, which might be excessive, how is that working in terms of outcomes, so far as you can see from your position? ---So, the assessment process from the SME commenced end of August last year, thereabouts. There's been around approximately 500 use of force reports that had been reviewed. Out of those 500, I have been informed that there has been 22 where there's been identified issues, which have been referred through to Professional Standards. And it's not all about misconduct. Some of it is about just, you know, sometimes procedures not being followed. But there's been 22 referred. The information I have is that it's resulted in six – six outcomes of remedial advice. There's been four, part 4 actions commenced. And eight that are currently under assessment – assessment investigation, as to whether they go out, but at this stage, they're looking to go out to commands, just for matters to be raised, with the members and the supervisors, of how to do better processes and just a bit of guidance around how they are actually using the force. Like the impact of tactical communications, for example.

THE CORONER: Just before we move on to the next one – something else - - -

DR FRECKLETON: (Inaudible).

THE CORONER: - - - given – I just think, on 26 July 2022, remedial advice was given to Constable Rolfe, in relation to his non-activation of the body-worn video? ---Yes.

But no remedial advice was given in relation to those people who failed to identify that, right. I know there's a big gap. But it was – you've taken one action against Constable Rolfe, and you haven't taken it for the same incident, against other people who didn't perform to the level that was expected?---I can't give you a direct answer on that, your Honour, as to why. The reality of it is that Constable Rolfe is the one

that didn't follow the lawful instruction, but the actions of the supervisor should have been taken to address him not abiding by that lawful instruction. But we – there is no evidence that we have provided that guides to the supervisor, on this occasion. And that - - -

I feel that part of Ms Ozolins questions, on behalf of the Association, were to identify and name that members have experienced, or have certainly perceived, that these sorts of rules aren't applied equally. Is there a – is there a desire to rectify that?
---Yes there is. Which is what - - -

Is there – is there a – is there a willingness to identify it? I think it has been identified in the reports, and a desire to rectify it?---No, we've identified that, it is an issue that where we need to be examining our supervisors more as to their duties. Which is why we are putting these process – have put these processes in place. Which is why we're also providing further training as to their obligations. And that they have responsibilities to do these things.

DR FRECKLETON: If today, a sergeant and a superintendent, failed as occurred here, to undertake their supervisory responsibilities properly, would action of some kind be taken to that?---Yes, there will and it does be taken as even just recently there was an incident at the college - I will be honest - sorry, I shouldn't say "be honest" - but there was an incident at the college where a senior constable committed misconduct that was reported to his supervisor. The supervisor did not take action and we found out that that supervisor did not take action and we also took disciplinary action against that supervisor for failing in his duty.

Moving now, if I may, to the second of the matters involving Malcolm Ryder. This is something that has been before the local court. It involved Mr Ryder holding a phone and swinging at police and he was being arrested in the course of the attention being given by police to related matters and they are trying to arrest a relative of his. Now, this all happened on 11 January of 2018. So it had been reasonably early given the period of service of Officer Rolfe. And there were criminal charges that were pursued against Mr Ryder. Judge Borchers, as the court knows, made some adverse comments about Mr Ryder and others. I beg your pardon – I beg your pardon - Mr Rolfe and other members of the police force. Mr Barram then looked at this in the course of his review and formed the view that the use of force by Mr Rolfe was disproportionate and the matter could have been dealt with in a different and better way. What is your view, as Assistant Commissioner, of what took place, you having reviewed the various material that is now available as to whether it is established on the evidence that Mr Rolfe used excessive force?
---Yes, your Honour, I have looked at this one closely and I've looked at the body-worn video myself, step by step, frame by frame. The Professional Standards Command done a full investigation in relation to this incident, reviewed all the available evidence. There was no body-worn video at the interaction between Mr Rolfe - or Constable Rolfe - and Mr Ryder.

That was Mr Rolfe and a number of other members who had had their body-worn cameras switched on, is that right?---Yes, that is correct, but when it comes to the incident of use of force between Mr Rolfe and Mr Ryder.

Yes?---There was no body-worn footage available or captured to examine that exact moment but on the evidence gained by the Professional Standards Investigators and that lack of body-worn footage to verify or not verify accounts of those persons present, is the matter was unsubstantiated or unresolved because of there was no evidence to say either way whether it was excessive force or not. On review of it I also took into account the evidence of one constable - Constable Chatterton, which is - that Constable Chatterton he, at the scene - so there was allegation that the force used by Constable Rolfe was as a result of force being used against himself during the apprehension of Mr Ryder where Mr Ryder is alleged to have been scratching up at his face.

Yes?---And so he - the rationale or the assessment of Constable Rolfe was he used the force to stop further assault on himself and he claimed that he - the scotching to the face. So, on evidence from Constable Chatterton, which I have reviewed and his statement is that at the scene he observed a mark on the forehead of Constable Rolfe - at the scene - so - not at the scene but at the vehicle at the scene and then there's also photographic evidence of a mark on the forehead of Constable Rolfe, being the only one marked which tends to lead to the - tends to lead to the version of events that he was - or attempts were being made to scratch his face.

THE CORONER: When was that photograph taken?---That was taken at the police station on return to the police station. So, taking into account that - - -

DR FRECKELTON: I will stop you there, just while we're returning to that. As you know, another witness before her Honour has said that she was told by Mr Rolfe that he procured the assistance of a female detective upstairs to inflict that mark in his head. What did you make of that, if anything, in terms of sequence of evidence available in respect of when the scratch to his face was (inaudible) was inflicted? ---Yes, so we can't verify it - or could not verify - there was three statements from Ms Campagnaro.

And that, I think was - that was just - - -

THE CORONER: No, not over the name, over the image.

DR FRECKELTON: Thank you. Yes, three statements made?---There were three statements. It was hearsay evidence from Ms Campagnaro but irrespective - irrespective is that her evidence states that he got someone to scratch him on the face to justify his use of force but we had evidence from Constable Chatterton that he had - already that scratch or mark on his face - or his forehead - at the scene, prior to getting to the station and there is no other scratch or mark visible on or on photographs.

So what relevance does the existence of that mark on his face prior to returning to the station have for your evaluation of whether there was excessive use of force? ---So, the relevance is, from my point of view - is that some level of force was being applied to Constable Rolfe and he used force to successfully apprehend Mr Ryder in the process, and it is - Mr Ryder should not have got any injuries, but I cannot definitively ascertain that in the circumstances that the force used was inappropriate, unnecessary, nor proportionate or excessive in the circumstances.

DR FRECKELTON: And this is set out, your Honour at par 5 and following Mr Porter sending that letter.

Now, so is extra weight being given to the account from Mr Rolfe as against that from a civilian complainant?---No, it's not. So - which is why it is basically unresolved as in we cannot determine the correct version of events and who is - who is correct. So you can't sustain - you can't substantiate an allegation unless you have evidence on reasonable grounds to determine that that has occurred.

THE CORONER: Which goes to show how important it is that body-worn video is activated.

DR FRECKELTON: Yes. (Inaudible) agreement from Mr Porter about that?---You don't have any disagreement from me, your Honour.

THE CORONER: Sure. And how serious it should be viewed by the police force when body-worn video is not activated?---That is correct. Which is why some members have been given formal disciplinary action in relation to non-activation of body-worn video.

DR FRECKELTON: Well, it's remedial (inaudible) in this regard is it not? ---In this regard.

THE CORONER: On this one?---Yes. So as I highlighted before, you know, just one non-activation, you give remedial advice to correct behaviours but then if the behaviour - ongoing behaviour continues then you escalate the outcomes of the managerial intervention you are going to undertake with the member.

And the only other thing I would point out is that in this case it seems that the police involved were aware of the benefits that can be obtained from reporting evidence through photos or video, because that was done when they returned to the police station in relation to Constable Rolfe?---That is correct.

But they did not use those same resources to record what occurred in the house? ---That is correct, your Honour.

DR FRECKELTON: I think one person did, to be fair to - - -

THE CORONER: One, sorry.

DR FRECKELTON: But the others did not.

THE CORONER: I don't want to - - -

DR FRECKELTON: Five of the six did not.

Another vice in what occurred was that Mr Rolfe was obliged to generate a custody injury illness report, was he not?---Yes, he was.

And he did not do that?---That is correct.

And in January of 2018 he was counselled by the Watch Commander for not having done so?---Yes, he was.

The next one in chronological sequence, your Honour, is the matter of Master TG, which was an incident which occurred on 11 August of 2018. And your Honour will remember that there were effectively two complaints to this. There was what this court has termed in terms of his being removed from the rubbish bin and there was also a complaint which was made in September of 2018 by NAAJA about Mr Rolfe allegedly having dropped his knee onto Master TG's head.

I'd like to go through this briefly with you, if I could, Assistant Commissioner. There was this complaint quite early after the incident, within three days I think, of excessive use of force in regard to the knee to the head, is that right?---Knee to the back of head, that's correct.

It was a month later, let's say five weeks?---Yes, that's correct.

Now that resulted in a preliminary enquiry by PSC by Sergeant Bayliss?---That's correct, your Honour.

And you have reviewed all of this documentation, have you not?---Yes, I have.

And what did Sergeant Bayliss – Sergeant Bayliss has said what relevant information to give to the Ombudsman. And did she focus on the two separate issues, the one that was the subject of the complaint and also what occurred in relation to the bin?---Yes, she did. She gave a fairly detailed examination of exactly what was on the body worn video.

Right. Adverting to both issues within and also the taking into custody with the knee, is that right?---Yes, that is correct.

All right. At first sight was there any evidence supportive of the allegation from Master TG in respect of the knee to the head?---No, there was not.

So her material was provided, was it not, to the Ombudsman?

That is document 3-76 for your reference on the brief, your Honour.

So that document was sent to the Ombudsman and then the Ombudsman went through the classification process, is that right?---That's correct, yes.

And what happened in that classification process?---So during the classification process the Office of the Ombudsman determined that the complaint allegation was not sustained or able to be substantiated and declined the complaint.

So that's the position of the Ombudsman, the knee to the head allegation is not sustained. And did the Ombudsman's Office engage with what occurred with a decanting of Master TG from the bin?---When you say engage - - -

Did they say anything about that in their report back to PSC?---No. So they didn't – there was – the only report back to PSC was the letter that they sent to the complainant. So they provided PSC with a copy of the letter to the complainant declining the complaint. And in that letter they do refer to the bin, but make no reference in relation to the use of force in relation to the bin.

That was also in 3-76, your Honour.

Now what should have happened when this matter came back to PSC through this process of the Ombudsman's involvement?---What should have happened – and it didn't in this case and which I find it very unusual – is that if we had concerns with regards to the use of force, irrespective of the complainant allegation, that we would go back to the Ombudsman's Office highlighting that we believe that this needed to be looked at. And we do that on numerous occasions.

But not this time?---Not this time, no.

All right. As a result of that had you given instructions as to the proper response that should take place in such a scenario to members of the Professional Standards Command?---Yes, I have.

And is it your understanding that the Ombudsman has done something similar in terms of looking beyond the focus of the complaint to all of the relevant circumstances when the Ombudsman's Office does its classification job?---Yes, I have. I personally spoke with the Assistant Ombudsman from the Ombudsman's Office in relation to the matter. They were actually surprised themselves that they didn't pick this matter up because they normally identify a number of ancillary issues when a complaint comes in. And on this occasion they did not and so the Assistant Ombudsman has already reminded her staff to ensure that they undertake a proper assessment and review of all matters.

Now putting aside then the allegation of the knee to the head, how did you characterise the behaviour of Mr Rolfe in terms of closing the bin lid and then pushing it over when Master TG was still in it?---Yes. In my view the force used was not appropriate in the circumstances. And do you want me to expand or?

Yes please, sir?---So when I reviewed it, I took into account the ten operational safety principles in a tactical options model. Master TG was hiding in the bin. He was just sitting in the bin. There was no verbal communication from Constable Rolfe to Master TG, which is the key thing in relation to our operational training and tactics, as in it is – you always have to communicate. It is right in the centre of our tactical options model. He provided no instruction to Master TG. And there was no requirement or need for him at that point in time to close the lid or put the bin down in the manner that he did onto the ground to apprehend Master TG, because he's already apprehended and contained within that bin.

So no proper verbal communication, frightening behaviour in terms of closing the lid, inappropriate use of force in slamming the bin over?---Yes. In my view, it was not necessary and it was excessive in the circumstances.

But by the time that you were doing your review in 2022 there were s 162 problems were there not?---Yes, there was. Sorry, yes, there were.

Was Mr Rolfe directed to participate in a directed interview?---No, he was not.

Why's that?---Because at the time of us becoming aware of this matter, Mr Rolfe was absent on personal and other leave.

How long had he been away from work at that stage by the middle of 2022?---It was split but it was over 20 weeks. He commenced leave somewhere around mid-August and had been on leave ever since.

At any rate, was remedial advice provided to Constable Rolfe on 24 February 2023 (sic) about a need to refrain from using unnecessary force in apprehending anyone, including a minor, and also for the need to have regard to the principles of the (inaudible)?---Yes, this remedial advice was provided in line with other remedial advice that had been given to Constable Rolfe. So this was also the focus then also as part of what I've said when he comes back, if he does come back, to the police force. The aspects of retraining that he would be required to undertake, retake in relation to how he interacts with persons when he is using force on those persons, and his obligations of abiding or following the ten operational safety principles, and the application of the tactical options model.

Thank you.

And this is all set out at pars 18 and following for the third portion of the page, your Honour.

THE CORONER: Yes.

DR FRECKLETON: Unless there are any other issues, I'll move to the next matter, which is what's termed the Arulen(?) Park incident. This was the beginning of 2019 on 18 February. This was a matter in which her Honour and the court has seen, involved two intoxicated males who were staggering in an unco-ordinated way, and

Constable Rolfe pushed both of them to the ground. Do you recall this matter?---Yes, I do.

Mr Barram identified that the use of force utilised by Mr Rolfe was excessive, and then we look at a threat and again, that he should engage in verbal interaction with them rather than resorting prematurely and unnecessarily to the use of force?---Yes, that's correct.

Do you agree with Mr Barram?---Yes. No, I do agree with, I totally agree with Mr Barram. Of course, there was no verbal – I've examined this body-worn footage time and time again. There was no indications of verbal communication at all. The two males involved were highly intoxicated, unable to stay on their feet or hardly able to stay on their feet, and they were just immediately shoved, which we call a dive under operational safety tactics. As in they were shoved with a forward push straight onto the ground, and there was no requirement to undertake that, because they were drunk. There was no signs from what I saw of any indication of threat to the police officers. It was reported that it was a ground stabilisation. It was not ground stabilisation. Ground stabilisation is taking someone to the ground and holding them on the ground, because you have to stabilise and because of the threat to you, and to restrain that person. None of that was undertaken at all, and in my view, it was an excessive and unnecessary use of force.

All right. Now was this picked up by the supervisory process, as it should have been?---It was reviewed by the supervisor, but the supervisor did not pick up that it was unnecessary or excessive use of force.

It's a little hard to understand that, Assistant Commissioner (inaudible) to an untrained eye. It's fairly apparent that two intoxicated men were pushed over for no obvious reason?---Yes, and I agree with you, and that supervisor has been given remedial advice directly from me in relation to his obligations. What he needs to assess, and what his obligations is in relation to that assessment, and what, I also highlighted what the legislation states in relation to excessive use of force. As in what it actually means, and this is what it means, and highlighted his roles and responsibilities as a sergeant.

The review by the Professional Standards Command was prompted by the analysis of Senior Sergeant Barram in March of 2020. Is that right?---That is correct, your Honour.

And that was done in May, and with an outcome that was presumably influenced by the statute of limitation issues in s 162?---That is correct, your Honour.

Nonetheless, remedial advice was provided to a number of members, including Mr Rolfe?---Yes, that is correct.

To be absolutely strictly accurate about it, it was given to Mr Hansen and Mr Kent, and he advised the CO by reason of his absence, ongoing absence from work, that

he would be given remedial advice in relation to the (inaudible) matters when he returned to work?---Yes, that was correct.

The next matter, and this is another minor, Master CW. This and the next matter, Mr Madrill, are both pursuits engaged in by Mr Rolfe in April 2019. First day of April, the next on 20 April, but they were different locations. But is it fair to say they've got a number of features in common?---Yes, that's correct. Could you just elaborate for me, Mr Freckelton?

Yes, of course. Let's do Master CW first?---Yeah.

What occurred was that Constable Rolfe engaged in a foot pursuit of Master CW, and at the end of it, there were injuries apparent that Master CW had sustained to his head and nose, and there was bleeding from those injuries?---Yes.

Is that right?---Yes, that's correct. Yes.

This was identified as a result of a complaint that was made promptly by the young person involved, and then it was managed according to this table by the Complaints Resolution Process. But then the Ombudsman recategorised the matter as a category 2 matter. Now you refer to this at pars 134 to 142 of your first affidavit, and you refer to it then also more briefly at pars 21 to 23 of your second. So what was taking place here? There was the incident. Was a force form generated by the members involved?---Yes, I believe so.

One thirty four and following?---Sorry, I have too many folders. Yes, so there was a use of force completed by Constable Rolfe.

And the young man made a complaint in his electronic record of interview, did he not?---Yes, he did. That's correct.

So can you talk through the process of a Complaints Resolution Process being identified as the suitable means of resolving the matter, when what was being complained about by Master CW was an excessive use of force by Mr Rolfe? ---Yeah. So the complaint was obviously made by Master CW. It was referred through to the PSC, Professional Standards Command, through the Blue Team. The Professional Standards Command as per their normal process undertake a preliminary enquiry for why that information added to the Ombudsman's Office, with the information for the Ombudsman to make an assessment. The Ombudsman on this instance determined it would be dealt with through a Complaint Resolution Process. Off the top of my head, I don't know the extent of the reasoning for that. But it come back through, for a Complaint Resolution Process. So sent back down to the Southern Command to deal with through the conciliation process.

Was it conciliated?---It was not conciliated. So it was referred back through to PSC through to the Ombudsman's Office, where they then recategorised it to be, for an investigation to be undertaken as a category 2 investigation.

Thank you.

That's at par 140, your Honour.

Now the investigation was then done by Professional Standards Command. Is that right?---Yes, that's correct.

And that reached a conclusion on 11 February that there was insufficient evidence to determine whether the force used was reasonable and necessary, or proportionate, and so no adverse finding was made against Constable Rolfe in that regard, but remedial advice was once again given to Mr Rolfe, in relation a non-activation of his body-worn video, and similar advice was given to another member (inaudible)?---That is correct.

Now you can see Assistant Commissioner, that what has been marked in, what I hope is green for her Honour, is the numbers of remedial advices that have been provided to Constable Rolfe. And this is – this is number five in – in terms of the sequence of remedial advices, and each time about – well about a variety of matters, including body-worn video. But of course this time, it's only provided on 26 July, to Mr Rolfe. Is that right?---Yes, that's correct.

So that's a fifth lot of remedial advice, but it's – the provision of remedial advice isn't chronology by reference to – it's chronological by reference to the – the issue being identified, but not when it's actually administered - - -

THE CORONER: Sure.

DR FRECKLETON: - - - that's a very convoluted way of putting, and hopefully you understand. At anyway, this was a – this case, Assistant Commissioner, I'll try to get there. This was a – this was another case where the job of PSC was very difficult by reasons of the absence of the body-worn footage?---It is, correct, yes.

Now I'm going to move through the next one fast, because it bears so many similarities to the previous one. The incident was 19 days later. It was again a pursuit, up a hill. There was an injury to the victim's knee. PSC investigated. There was no body-worn footage, and the decision made by PSC was that there just wasn't enough evidence to tell one way or the other, whether the force used was unjustifiable or excessive?---Yes, that is correct.

Do you endorse that analysis?---Yes I do, because again, without that body-worn footage, you can't determine the voracity of each version of events. Because there is no other independent evidence.

Your Honour has the – the first and the second affidavits where these matters were traversed.

THE CORONER: Yes.

DR FRECKLETON: And with the first one, in par 152 and following.

Now, remedial advice in the end was given to a variety of members, Constable Rolfe included, about this issue of body-worn footage, once more?---Yes, that's correct.

Your Honour, I propose to just go briefly to the next matter, because they can be done quickly.

THE CORONER: Sure.

DR FRECKLETON: And if your Honour wishes to have a break then, (inaudible).

THE CORONER: Sure.

DR FRECKLETON: This is the further matter in relation to Ryder, and it's the perjury component of it, in respect of the evidence given by three members for the – for these purposes we're talking about, Mr Rolfe, at the criminal trial involving Mr Ryder. Do you recall this decision?---Yes I do.

The district court judge made some strongly worded criticisms of the truthfulness of the police members involved. And as a result of his doing so, was the matter referred to Crime Command, for consideration to be given to charging the members, and in particular, Constable Rolfe, with perjury?---Yes it was. It was in relation to two members, Constable Rolfe, and Constable Zandelle.

And what occurred? What was done to evaluate whether charges in respect of both of those persons should be brought?---The criminal investigation determined, or put up an opinion file for assessment. But it was concluded that there was insufficient evidence to proceed with a prosecution for perjury.

And as a result of that, that was the decision from the Professional Standards Command.

And your Honour will recall that I informed the court of that earlier in this inquest.

THE CORONER: I'm not sure if that's accurate though.

DR FRECKLETON: Which part? Mine or (inaudible).

THE CORONER: Mr Coleridge might have the (inaudible).

MR COLERIDGE: Your Honour, I think he might be confusing the assessment by police, (inaudible) which was that he wasn't challenged, the public interest about his (inaudible) didn't justify a challenge.

DR FRECKLETON: So it's as a result of that, at any rate, charges were not put. So does that resolve - - -

THE CORONER: Yes.

DR FRECKLETON: - - - the issue, your Honour?

THE CORONER: Yes?---Sorry, your Honour.

I mean there was just a slight nuance there - - -

DR FRECKLETON: Yes, yes.

THE CORONER: - - - in relation to the question of whether or not there was sufficient evidence.

DR FRECKLETON: Yes.

There was the evidentiary issue and the public interest issue - - -

THE CORONER: Yes.

DR FRECKLETON: - - - as to (inaudible) charges, I'm sorry. Your Honour, I still have a few more matters to go through yet. Would you – would you like to have a break now, or - - -

THE CORONER: Sure, we'll have a – we'll take the lunch break now.

DR FRECKLETON: Thank you.

WITNESS WITHDREW

ADJOURNED

RESUMED

MURRAY SMALPAGE:

THE CORONER: Deputy Commissioner. You'll need someone in the witness box, Ms Ozolins.

MS OZOLINS: Yes.

XXN BY MS OZOLINS:

MS OZOLINS: I had asked you about his support program, and the Peer Support program was being reviewed and developed further by the project team that you talked about?---That's my understanding, yes, your Honour.

Now another important aspect of member welfare that we talked about in the course of this inquest is fatigue, and the effect that that has had and continues to have on members. Am I right in saying that the Northern Territory Police Force doesn't currently have a fatigue management policy?---Your Honour, unless I can refer to that in my affidavit, I'm not specifically aware of a specific fatigue policy, other than just a high-level awareness throughout the agency and throughout the Force of the impact on service in community and elsewhere across the Territory.

Are you aware if the development of a formal policy has been discussed previously, or whether that's been (inaudible)?---A formal policy hasn't been discussed with me, your Honour. It may have been through our wellbeing branch and elsewhere. But not to me directly, no.

No. So I'm not trying to be tricky, I just wanted to check if it's on the radar and part of the reforms?---I think it links very closely to the wellbeing reforms, and I think fatigue is at the heart and back of mind of every senior police officer in the Northern Territory.

So you're open to the formulation of a policy being something that is developed as part of the reforms that are going forward?---I have no issue at all with that, yeah.

And I note your comments in your evidence previously about the need for more resources across the Northern Territory Police Force?---That's correct.

You've talked in your affidavit, and I'm specifically referring to the most recent affidavit at par 278, and you surmised that the situation from 9 February and the days leading up to that are unlikely or wouldn't arise again, as there are more members stationed particularly at Yuendumu would you agree that whilst there are perhaps more positions and more members there from time to time it's common practice for those members, and in Yuendumu and in other remote stations, to relieve at other remote stations from time to time?---Yes, your Honour, to assist with fatigue management right across the Territory, not just in any one location.

So it could be the case that even though a station's member numbers might reflect that they have a full complement of staff it's quite likely that some of those gazetted members are actually in other places?---That's possible, and probable, your Honour. But again, I think it does provide then some relief at the larger centres like Alice Springs, Katherine, and Tennant Creek who are also under immense demand for their services as well. So it's a balancing across the board, you know, take from one demand and put it somewhere else.

Sure. And just generally speaking you indicated in your affidavit that the reintroduction of the Territory Duty Superintendent position would be a positive contribution to managing resources across the remote stations. But I just wonder if you could elaborate on that a bit, and given that the numbers are moving around, so to speak, how that actually alleviates or – well, alleviates the problem of members working the amount of overtime they are in remote areas?---I think – I think it does assist in so far, your Honour, and for those that are listening, that if there is a shortage at a particular location, a demand on services they can't meet the Territory Duty Superintendent speaks with the authority of the Commissioner of Police and can rearrange the pieces of the board and take those resources from somewhere else. So ultimately it's always a balance between where we get them from, but the reality of it is if there's a really high need demand here now we can take members from elsewhere to send their – to help provide relief, you know, with fatigue support, surge capability, and their operational activity.

I accept what you're saying, that it's re jiggling existing numbers it's not actually additional resources, so to speak?---No, the Northern Territory Police Force operate within the set parameters of our resourcing, your Honour.

The last thing I wanted to ask you about, Deputy Commissioner, was just picking up on a matter raised by my learned friend from NAAJA about the employment of ACPOs. And I don't think there's any disagreement from anyone that they are an integral resource for effective policing, and you agree to that. You said that in your affidavit?---Yes.

Now, it's specifically noted that ACPOs and constables receive similar training – sorry, ACPOs receive similar training to constables with the exception of instruction in relation to criminal code matters?---That's my understanding, yes.

They don't receive active armed defender training?---That may be correct. I'm not quite sure, your Honour.

I think you've said this in your affidavit, your latest affidavit, at par 84. And you have listed them. Active armed defender training, the use of patrol rifles, hot pursuits, investigative interviewing, and domestic violence. So what I'm going to suggest also with reference to the determination relating to ACPOs which is already on the brief at 18/15, that the only real difference between ACPOs and constables is that they have no power to investigate indictable offences. Would you agree with that?---That's correct.

And on a day to day basis their practical work line is very much similar to a constable?---I would agree with that, your Honour. And in many instances they are the other sworn member that accompanies the constable throughout their duties. The advice I have, provided within my brief-of-evidence though is that tragically, unfortunately indictable offences do create a significant portion of the workload of the Northern Territory police. That's the significant difference between them.

Sure. But in remote communities would you agree that predominantly the type of offences that police are dealing with are offences arising under the *Domestic and Family Violence Act*?---A significant workload I'd suggest, yes, your Honour.

Summary Offences Act?---I imagine, yes.

The Liquor Act?---Yes.

And some offences under perhaps the *Misuse of Drugs Act*?---Yes.

Now, none of those are indictable offences. Would you think that the role and remuneration and conditions of that post should be more aligned to constables, noting for example the administrative stream of police or the auxiliary stream, as was pointed out yesterday?---I personally have no – no objection that we consider that pathway. I do however note that with family and domestic violence there's usually an element of a high level of criminality that is associated. Perhaps serious assaults or serious harm. But I – as a general principle I don't have an adverse position to that.

And similarly, just since you've raised the *Domestic and Family Violence Act*, I absolutely accept that in many cases offences under the *Domestic Violence Act* will also be offences under the *Criminal Code*. But one portion of the training that ACPOs don't receive as part of their recruit training is training in domestic violence. Are you able to elaborate on why ACPOs aren't trained in dealing with domestic violence situations?---Specifically, no, your Honour. I'm not in a position to be able to provide any clarity on that other than to say that family and domestic violence for the remainder of the year will be a significant scope of works for the Northern Territory Police Force. There will be an inquest before your courts later this year. There's a project team operating on that which is looking at all the interconnectivity between roles and responsibilities right across the Northern Territory Police Force, and indeed government, to improve on that. And that may be a key recommendation Northern Territory police embark upon prior to your inquest, your Honour.

So a recommendation could perhaps be that ACPOs - - -?---It could be, yes.

- - - receive that training and that will bring them further into line with like, a constable?---Yes.

A recognition of the duties that they do in addition to the unique competencies that my learned friend referred to yesterday?---Yes.

The other issue in relation to ACPOs is that the current structure doesn't allow a promotion phase for ACPOs so much as the move to a senior ACPO position is based on years of service. Would you be supportive of a promotional stream within the ACPO ranks?---Your Honour, I'm not fundamentally opposed to that either. Albeit, the pathway we would hope to progress path would be from ACPO to constable so we can look at future roles at commander, assistant commissioner, commissioner.

All right?---So in the perfect world we would encourage ACPOs to transition to constable as a – you know, it's a personal choice I accept, but we would encourage them to look at the sworn – full sworn promotional pathway and whether we can get initiatives that connect those better would be beneficial.

Sure. And right now is there an identified pathway for ACPOs to advance to constable without going back and doing the full constable training?---Your Honour, I think – and again, I'm reflecting upon my memory – I think that we were looking at some – those that had completed a Cert IV, for example, of a similar equivalent rank. I thought there was a – and again, I can't put my finger on it – but I thought we would transition them straight to constable. I don't know if they met the requirements.

MR OFFICER: This is dealt with in par 84 of the third affidavit.

MS OZOLIN: I guess once again that refers to courses. But what I was getting at is do you foresee that it could be the case that if an ACPO has already received, for example, 24 weeks training and all that's missing is that additional six weeks for those competencies that you outlines par 84, that ideally an ACPO could receive that additional six weeks of training and be a constable in a very short space of time? ---As I said, your Honour, I'm not fundamentally opposed to that, no.

They're all my questions, thank you, Deputy Commissioner. Thank you, your Honour.

THE CORONER: Mr Officer?

MR OFFICER: Deputy Commissioner, my name's Luke Officer and as you're probably (inaudible)?---Mr Officer.

Just three topics I'd like to canvas with you this afternoon, the first being the actual – some of the matters on 9 November 2019. I appreciate you were in the Northern Territory police at that time, but you've made some observations about events. The second is the applications of use of force and (inaudible) 9 November 2019 but the reviews have been undertaken, and then finally, the issue of welfare. Before I do, Deputy Commissioner, it has been well established as to you're here as part of the executive of the Northern Territory Police, that is from the Commissioner way down to Assistant Commissioner (inaudible)?---Yes.

And you are speaking on behalf of Northern Territory Police Force as an (inaudible)? ---Yes.

And, given the wealth of evidence about the comprehensive reviews that have been undertaken since this incident - and I think you said yesterday that this (inaudible) significant incident facing Northern Territory Police at least in the last 30 or so years. Was that your evidence?---At least a decade, your Honour, that I'm aware of, yes.

And it would've been the subject of great discussion between the executive from the start of your tenure in 2020?---In terms its impact on policing, yes, I'd accept that.

Well, if it's led to comprehensive reports?---I think some of the - yes, it has, but I think some of those reform programs would've commenced regardless. I think this was prior to the employment or commencement of the new Commissioner. There's his back to basics project was a planned approach anyway. I think some of the issue that later became apparent, helped with some of the reform process though.

Yes, so basics - back to basics?---Yes.

Documents, the one you referred to a lot but what I mean is surely before you discussed at the executive level there's effectively lessons learned and will occur for 16 November 2019?---If that information was available, yes.

Can I ask, did you meet frequently to discuss the matters at Yuendumu as an executive at (inaudible)?---No. We had an organisational steering committee which is around the investigation pathways and tried to de-conflict between different pathways of investigation but we didn't meet as an executive to discuss Yuendumu at all, that I recall, as a specific - specific incident, no.

Can I ask then, with all of these reforms and these reviews and lessons learned and the Commissioner's back to basics plan, why are you here representing the executive and not the Commissioner?---Well, I'm not sure - - -

(Inaudible)?---Well, in my 40 plus years I can't recall a Commissioner giving evidence at an inquest. I was the one who was nominated by the Commissioner to represent the agency and I've done that.

So there was discussion about it?---Well, the Commissioner I don't think discussed it with me - he told me, that I would perform that role.

I will move on. You've made - or given some observations about the night in November 2019 and you appreciate that you weren't present - or weren't you part of the Northern Territory Police Force at the time - you agree?---I wasn't, no.

And so would you accept at one level, your observations are really just another observation amongst the myriad of assessments of what occurred that her Honour has before her?---I'd accept that, your Honour, and the evidence I've observed in this court, in this - - -

Yes, based on some evidence you've observed in this court?---Yes. your Honour.

And body-worn video?---Yes, your Honour.

Material you've read?---That had been provided to me, yes, your Honour.

Been provided to you, yes. Have you read the evidence of Constable Rolfe that he gave at trial?---I haven't specifically read the evidence of Constable Rolfe that he gave at trial, no.

Well, at transcript 4074 of this inquest, well, counsel said to you;

"And I think it's going to be a matter for her Honour, as best she can on the basis of the six accounts that she has (inaudible) she's about (inaudible) we've yet to hear from Mr Rolfe. What took place with the briefing with Sergeant Frost who went through what was taught is what it said. Can you identify with confidence what was said or not said at the briefing of all the members at the station."

Which your answer, quite rightly, is "No." The point I'm asking, if you haven't read Constable Rolfe's evidence at trial how can you be of the view that they didn't follow a plan?---Because the plan says that they would start it and commence at 5 o'clock in the morning. That's the evidence I've heard.

Yes. You've also given evidence in this inquest that you understood that Sergeant Frost had said to the IRT when they departed at 7 o'clock, "If you come across Kumanjaji Walker - arrest him absolutely"?---Yes.

You've heard the evidence of IRT members (inaudible) in this inquest?---I have.

Have you read their trial evidence?---I haven't examined their trial evidence. I've been brief on their trial evidence as it progressed but I haven't read their every transcript, no.

So you're aware, aren't you those IRT Members including Constable Rolfe from (inaudible) Senior Constable Donaldson have given evidence that they never saw (inaudible) plan?---I've heard that evidence, yes.

So again, how can you be so sure in your observations that there was no following of the arrest plan?---Because they didn't follow the arrest plan.

Deputy Commissioner, how can you say that when you haven't considered a large portion of evidence that is before this inquest?---Your Honour, from the evidence I have been familiar with, the plans that I've read, the evidence that I've heard, they didn't comply with the arrest plan.

So, selected evidence?

THE CORONER: Are you putting a separate plan?

MR OFFICER: No, your Honour, I'm putting what - - -

THE CORONER: Well, I don't know that it's fair to say "selective evidence".

MR OFFICER: I'll withdraw (inaudible) your Honour.

You say at 4074 in response to your counsel, page 4074 in this inquest:

"Now the IRT men received information Kumanjaya may well have been at 522 or 518 which was just close by. In light of the fact they had taken it upon themselves to attend - on your account - on your evaluation - to arrest Kumanjaya at some time shortly after 7 o'clock. Should they have been in communication with Sergeant Frost - or anyone - about the new idea they had to go and get him at 511 or 518. In my view it would have been very prudent, yes."

Do you remember giving that evidence?---Yes.

So how can you be of the view that that would be very prudent when you have not considered the evidence of those four IRT members who said there was no briefing from Sergeant Frost and they were told if they happened to come across him, to arrest him absolutely.

DR FRECKELTON: But your Honour, no-one said there was no briefing. There was a briefing to Donaldson, there the briefing to Kirstenfeldt and Rolfe, there was a briefing to the five of them, the issue is the content of each of those the briefings but there were three briefings.

THE CORONER: Was the question "Had the proposition that there was no briefing"?

MR OFFICER: Well, how can he be sure - that there was a briefing? You know, he has not considered the evidence of Constable Rolfe.

THE CORONER: So are you suggesting that unlike all the other witnesses that we've heard, Constable Rolfe has a different account and there was no briefing. That's what you are putting to him?

MR OFFICER: No briefing in the sense which that - - -

THE CORONER: Sorry, you said "No briefing".

MR OFFICER: No briefing in the sense - - -

THE CORONER: So if there - that's what I put to you earlier - I suggested earlier. If you're suggesting a different version of evidence to obviously what the Deputy

Commissioner is referring to then you should take him to that evidence and ask him about it - or ask him to consider it.

MR OFFICER: Your Honour, we hear about Constable Rolfe's evidence and I'm trying to be respectful to get the Commissioner also (inaudible).

Are you aware that Constable Rolfe has proffered a completely different version to the recollection of Sergeant of Sergeant Frost - at his trial?---I'm aware - I can't - I didn't read the transcript of his trial. I don't recall here sitting now, what the content of his commentary was. I am familiar with what I've read and what I've heard within the confines of this inquest.

I guess what I'm struggling with, Deputy Commissioner, is when you turn to page 4079 of the transcript in this inquest , when your counsel says,

"Well, it just seems if Sergeant Frost has developed a plan, as far as we know it, it hasn't been discussed in any detail. I don't recall Alefaio. There might have been some discussion, surely it would have been her and the way the developing scenario it would have been necessary for her to be there to ensure a full briefing was provided."

Your answer;

"So to give some clarity then, your Honour, I don't believe the sergeant is necessary at every briefing to perform an arrest from an action plan. It's a small location, perhaps if you're in a larger centre - Alice Springs - where you've got lots of activity, I agree, but I think where you've got a remote location, police make arrests every day without a police sergeant being present."

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

And in the question that follows;

"So, well officer-- Officer Alefaio had been their forward commander, so far as this arrest was concerned. Similarly, that's not clearly in the plan, your Honour. I think there would have been an (inaudible) opportunity for all of them to discuss who was doing what it becomes very clear to me, what's going to take place. And sometimes seniority's not the sole determinant of who's going to be the leader on that particular briefing. And you would receive direction on what action to take, who's going to go where. I imagine that should have occurred at five o'clock." Question, do you remember that evidence?---I do.

You say you received direction about who takes the lead in giving that direction. Your answer again, your Honour,

“I think the plan would have been broad enough for them to understand the basic tenement of what they were required to do. That’s my expectation of it.”

So I’m struggling with, Deputy Commissioner, your evidence, having not read Constable Rolfe’s, that there has been disobedience with the plan. And the evidence I’ve just read to you about, my words, tell me whether it’s right or wrong, there being some flexibility with how that plans implemented?---The plan of Sergeant Frost, as I’ve given evidence, was succinct, broad. My lived experience and what see trans place every day, is police officers effect the arrest without a sergeant being present. And when we get in a room, and say we’re going to arrest Murray Smalpage, you see it all the time. We don’t run it through as a gaggle, without some communication between each other, as what – how that will transpose. I don’t – that’s not always written down in a formal SMEAC process, or a - broken down to its minutiae detail, there’d be not enough hours in the day for the Northern Territory Police to affect every arrest. I think police officers, well-seasoned, well experienced to do that frequently, your Honour, I – I’m not sure what you want me to say. But if they’d stuck to the plan of 5 o’clock in the morning, they would have a conversation about what steps are going to take place. How hard could that be.

Because you hadn’t read the evidence of Constable Rolfe, with the greatest of respect, Deputy Commissioner?---So explain it to me then. The - - -

Would you agree with this. That at its most basic level, there was a fundamental flaw in communication?---I – I - - -

On 9 November 2019?---I think the – and I think I’ve previously stated, it would have been much helpful if there’d been a more detailed SMEAC delivered plan, so there’s no confusion, yeah, I agree with that.

And do you accept that there was some level misunderstanding of how the IRT operated, in particular, between Assistant Commissioner Wurst and Superintendent Nobbs?---In – in what sense? I think - - -

It was a general duties deployment (inaudible)?---Yeah, yeah.

And (inaudibl) correct, if it’s general duties deployment, then there was no requirement for Assistant Commissioner approval (inaudible) Wurst, to send the IRT out on the 9 November, that’s one misunderstanding perhaps - - -

THE CORONER: That’s been dealt with a million times. He wasn’t giving approval in his capacity as Assistant Commissioner. The evidence is that he was giving his approval, although he is an Assistant Commissioner, but filling in for the missing, I think Commander. That’s the evidence.

MR OFFICER: Yes but I think the intention is that Nobbs thought he had said that because of standard operating procedure. I’m not talking about high risk or what not, I’m talking about a miscommunication, or misunderstanding, of whether or not it was required.

DR DWYER: I object if there's any suggestion that that's of particular relevance, in terms of the communication break-down. Because I read the evidence onto the record that he was seek – he was seeking approval because it involved administrative – it was an administrative process, because it involved resources. He wasn't seeking approval for the operation, as a high-risk operation. And so the relevance of it is lost, in my respectful submission.

MR OFFICER: I'm not suggesting it was a high-risk operation, it's being dealt with ad nauseum and was general duties. I'm simply asking, do you think there was a level of misunderstanding of what was required to send the IRT out, because of the very issue we're just debating, between Nobbs and Wurst, there is a discrepancy as to what (inaudible) deployment was?---Well I – no I think - - -

DR DWYER: I object. I don't think that is the evidence in terms of the purpose of their deployment. They were very clear that there were two reasons for it. It was in effect, to assist in terms of the resourcing, and also to assist with the arrest of Kumanjaya Walker. So it was for general policing, and they understood that it was to assist with the arrest of Kumanjaya. I've got the transcript references here if it assists.

MR OFFICER: Transcript 978, to Assistant Commissioner Wurst, "If it had been raised with you – I withdraw that, what would justify the deployment of the IRT?" Answer,

"If there was a – so the way in which the conversation with Superintendent Nobbs and I transpired was, in my mind, the undertaking of a risk assessment in relation to that scenario. And I wasn't provided any information during that conversation that provided me with anything other than the need for additional frontline staff. If additional information was provided, then it may have justified the specific deployment, but that wasn't a request that was put to me."

That's the evidence that Assistant Commissioner Wurst gave. Have you read that, or were present for that?---I think I heard it here, yes.

"No." "And there's no" – question, "Is there, for general duties to be carrying bean bag rounds?---No." "Or long arms is there?---No." So my question is, do you think there was a level of misunderstanding, as what was required of the IRT on 9 November 2019, between Assistant Commissioner Wurst and Superintendent Nobbs?---I don't – I – it is miscommunicate – I think it was at that level with their misunderstanding, I perhaps suggest the IRT may have been misunderstanding, but I think we've heard evidence that McCormack instructed them to take all their kit, which included the bean bag shot gun. I don't think there was a direction that they had to carry it or use it. It was, as I understood it to be, in case event. That's how I've interpreted the evidence.

So when you say at par 259, of your third affidavit, "The NT Police Force notes that there's some discrepancies in the recollections of Sergeant Frost, Superintendent

Nobbs and AC Wurst, as to the role that each intended the IRT to play in Yuendumu.” Is discrepancies a misunderstanding as to what to do with the IRT? ---Well no I think it’s clear, they were deployed in a general support role. That’s the evidence that’s overwhelming that I’ve heard, in this inquest, your Honour.

Would you accept that there’s a responsibility of the senior executives in what occurred, following the 6 November 2019, starting with the axe incident?---In what context?

Well - - - ?---We would – we may become aware, but - - -

Were you aware Sergeant Frost had marked the 6 November axe incident on the internal system as management (inaudible)?---No I’m not aware.

Now I appreciate that you (inaudible) with the Northern Territory Police on 6 November 2019, hence my questions earlier about whether or not this has been discussed at an executive level.

And – and (inaudible) can I please have the document (inaudible) on the screen.

Deputy Commissioner, her Honour’s burden is for the (inaudible). Have you read (inaudible) two reports he provided for the criminal trial, and his trial evidence? ---I’ve seen them, your Honour. How much I can recollect of them, without refreshing my memory, I think it’d be a bit hard, but I’m aware yes, he’s provided a report, yeah.

Who provided them to you?---I don’t know whether it was part of this brief or I was aware he was going to give evidence, at the criminal trial.

Have you read them?---I’ve got a general appreciation of what was said in them, I can’t recall specifically if I’ve read them, or someone’s relayed them to me, or someone’s communicated that to me.

Was it discussed at senior executive level?---Perhaps Assistant Commissioner Anticich may have raised it with me, I don’t recall, specific - - -

(Inaudible)?---Yeah I think as the trial’s pressing, I think we were familiar with witnesses as they were coming and going, and what’s likely to come next, and things like that were brought to my attention, yes, as they - - -

You’re aware that he, himself, McDermott was a former Assistant Commissioner of the Australian Federal Police?---Yes I know Ben McDermott (?).

And he had a very large hand in designing the Safety Principles model for the AFP, which largely was adopted in the Northern Territory Police, some years ago, you aware of that?---I accept that.

So would you accept that, his opinion might hold some value?---Again, as I understood it, his evidence has been tendered and proffered, and mulled over and examined by everybody.

I'll take you to some parts of it, starting with the heading Introduction. I'm not going to read the first three lines, you can read those to yourself. But what he says is, providing his opinion about 9 November.

"I consider essential to examine the circumstances of a police encounter of Mr Walker three days previously on 6 November 2019, that should have alerted the Northern Territory Police Force, NTPF, executive to the need to take specific action in accordance with the published NTPF philosophy and policy on the question of safety and use of force."

Do you see that?---Yes, I do.

"That they did not unnecessarily place Constable Rolfe, together with his partner, Constable Eberl, in an unpredictable and extremely dangerous situation. Consistent with their accountability, the executive should have fully considered the risks presented, to ought to have resulted in options such as deployment of the tactical response group, adoption of a cordon and containment approach, development of arrest-plan options, use of hostage negotiators, and or deployment condition of physical and technical surveillance resources."

Do you see that?---I do.

Do you agree with that opinion of Mr McDermott?---I think that opinion reflects perhaps a Rolls Royce plan by the Australian Federal Police, and I don't think it reflects the nature and extent of policing in the Northern Territory in remote locations. No, I don't agree with its entirety at all. No, I don't.

You accepted a moment ago the proposition, had you been aware, because I know you weren't there, that if Julie Frost (inaudible) you would have been there as an executive member?---Yeah, well no, I didn't acknowledge that. I think under the new current system with the Territory duty superintendent, can I just expand upon this so everyone's got clarity. The Territory duty superintendent, acting as the Commissioner's representative, would coordinate resources. No the Deputy Commissioner, not an Assistant Commissioner, not anyone else. At some point, as that matter progresses, they prepare what's called a ZZ notification, which is pumped then in an email, and I may read off something that's happened. That was police officer injured, significant event, a fatal crash. If it required extensive further work, it would be referred to an appropriate member of the executive at that point, but not before. So for example, a high-risk deployment by the Tactical Territory Response Group would require permission of an Assistant Commissioner, not a Deputy Commissioner, and he would receive that advice, and he would approve that process, and he would be briefed at that point. I don't think that existed in 2019. So again, your Honour, I think to suggest that members of the executive know every

time there's something dangerous or serious happening in the Northern Territory at any given moment of the time, is not accurate. Somebody in command would become aware, and if it was really significant, they would ring me or the Commissioner, or some, but that didn't occur in this instance to my knowledge, your Honour.

The Commissioner was marked as management significant. An Assistant Commissioner was told of it on 9 November. Do you not think, based on what was (inaudible) that perhaps there should have been greater senior executive (inaudible) what was to occur on 9 November, because of the absence?---But they were deployed in general deployment as general support. In that role, they are acting as general duty police officers, as they would anywhere else in the Northern Territory, and I think that was the response that we'd expect from them. I don't know that – no, I don't think that would happen. That's not how we operate as an agency.

That's precisely the point. That to deploy as general duties, after an accident on 6 November, to apprehend the very person who committed that offending, and you say that because they were deployed that way, it absolves any semblance of their responsibility?---Well I don't - - -

Duty (inaudible)?---With the greatest respect, your Honour, I'm sitting here answering questions. I'm not striking my responsibility or that of the Northern Territory Police Force at all. We're here to learn how we can improve upon this.

Which is why I asked of you, Commissioner, has the senior executive director (inaudible) this report?---I've indicated that I'm aware of the contents of the report. But again, let's unpack that, and if you want, take the time. I think as we've discussed, your Honour, around resource commitments, if the Territory response group attended, they would bring specialist capability. Those special capability don't exist everywhere.

Deputy Commissioner, This is - - -

THE CORONER: Sorry, I think - - -

MALE SPEAKER UNKNOWN: I'm just noting, we weren't given any notice of this document. Ordinarily we'd redact – it's not a criticism. It just displays the deceased's real name, and so if reference isn't being made to this page, I'd just ask that it comes out of the livestream. It wasn't criticism?

MR OFFICER: No, no.

So Deputy Commissioner, I'm not asking you to agree with me on this. The problem my client has, and that it seems to me you haven't really considered the opinion, despite (inaudible)?---I think, your Honour, there's evidence contained within the brief of evidence from former Assistant Commissioner Beer. I think we got Superintendent Gill, both of which are recognised – well maybe not Assistant Commissioner, but certainly Superintendent Gill in his review of the IRT,

appropriately to what the Northern Territory should respond to and how it should operate, and as a result of those recommendations, we abolished the IRT. There will only be one response capability, and that will be the TRG.

Commissioner, let's turn to Dr Beer for a moment. Have you read her statement (inaudible) that she gave the audio on?---The audio statement?

Well it's a transcript for her?---Okay.

(Inaudible)?---I'm aware there's one there. I can't recall specific detail of this.

I'm sure you've read it?---I believe I have, yes. I can't – if you can refresh my memory, I'll go to that point that concerns you and I'll try and explain.

She was Assistant Commissioner at the time, do you accept?---She was Assistant, I think Acting Deputy Commissioner at the time.

Acting Deputy at the time?---Yeah.

Okay, and Mr McDermott is critical of the lack of oversight and urgency of the senior executive to deal with the matter once it became apparent on 6 November as to what had occurred, and the IRT were deployed on 9 November 2019. Acting Deputy Commissioner (inaudible) at the time said at page 19 that she did not know what happened on 9 November. She didn't know they were being deployed, didn't know their roles or equipment. Did not know the facts. So when Mr McDermott talks about senior executive oversight, she's an Acting Commissioner of Southern Command, I take it?---No, no, I think of the Northern Territory Police Force at the time.

But she was from Southern Command?---Acting as the Deputy Commissioner in Darwin at the time, I understand it to be.

Do you not find it surprising she did not know?---Your Honour, I think we need to talk this through. I strongly suspect, deputy police commissioners and commissioners of police right across Australia, do not get notified every single time that the Territory Response Group or whoever their specialist capability is, responds to tasking. That is a responsibility of those commanders and those in the field to operate, and we train to deliver that, and I think that's unrealistic to expect that as a Deputy Commissioner I get told every, I'd need seven Deputy Commissioners to answer all the calls that we take. It's not practicable, it's not how it operates, and I don't accept that.

Your evidence is it's not practicable, it's now how it operates? Is that what you said?

THE CORONER: That's what he said.

MR OFFICER: Yes, I'm just clarifying that.

THE CORONER: Well it didn't need clarification.

MR OFFICER: Because at par 277 of your third affidavit - - -?---Yeah.

- - - "If the axe incident were to occur again today, it is expected that the relevant sergeant (inaudible) would advise the TDS. TDS would prepare and send an email notification to all executive members, comprising commanders, Assistant Commissioners, Deputy Commissioners, and the Commissioner of Police?"---That's correct. But it's a notification. That's not a responsibility for me that I have to approve something, authorise something. It comes out as an awareness. So I am briefed frequently on incidents after they've occurred, and if I have to make a decision, I am briefed about a decision I need to make. But that's exactly how it operates.

Exactly. That's the point, Commissioner. Do you acknowledge what Mr McDermott says, and you simply have to agree with it or disagree with it? If the change seems to be exactly what he recommends in his report, that then is insufficient executive oversight of this matter from 6 November when it was (inaudible)?---Well, no, I don't accept that, I think.

No?---No, I don't.

Do you accept, page 6 please, halfway down that the Deputy Commissioner stated, "In my view, the NT senior executive failed to fulfil a responsibility of support and a commitment to the principles of operation and safety and use of force in its overall management of the NTPF response, following the 6 November incident involving Mr Walker." Evidence of that failure is present (inaudible) principles of operational safety and supports, and you list them, which are the very ones you've given evidence about that the (inaudible)?---Yes, I can read that.

Now, the operation (inaudible) general abuse of force which is subject to review (inaudible) culminating in March this year has not deviated to much from the previous (inaudible)?---No, (inaudible).

And now that you're all going to be made aware if the incidents (inaudible) occurs again do you accept what Mr McDermott says that the safety principles in the use of force are equally to decisions made at executive level as they do those (inaudible)?--
-Again, your Honour - - -

DR FRECKLETON: Your Honour, that's not a correct characterisation of what it says. He makes a criticism but he doesn't say it's the same for different (inaudible) levels.

MR OFFICER: Do you accept that you should consider that safety operation principles (inaudible) decisions about an incident like the (inaudible)?---I'm just trying to clarify, your Honour, we don't make executive decisions about deployment. That's done by those relevant people. I'm advised of an incident. I don't make a determination about what equipment they carry, where they go. I'm briefed on

what's high level, appropriate with my rank and appropriate with my position, and those that are appropriately trained take control if I have to deploy the TRG or specialist deployments. They're trained for it. I provide them advice on either – usually it's after the event, what's happened, or, "Deputy, we're about to undertake a high risk deployment for a person who may be armed", or whatever the case may be. But your Honour, it's not – it's not an approval process and it's not something that I'm forced to consider every single tactical operation that's made by the 1,600 cops across the Northern Territory.

What about risk assessment? Deputy Commissioner, what about risk assessment?
---Yes.

Do you think that senior executives should have some say in response to police officers being charged at with an axe – and I'm talking about if it happened again – they're your words – do you not think the senior executive should have some responsibility in risk assessment in response to an instance such as this?---So in terms of a response, is that what you're saying, that - - -

Having some responsibility (inaudible)?---We have – we have – we always have responsibility. Usually when we become notified of (inaudible) our primary focus (inaudible) is welfare and wellbeing. Pick up the call, are you okay, what's happened? There are the machinations and the layers of command and control in the Northern Territory Police Force and every police force within Australia, that manage that regularly.

I want to talk to you if I can for a moment about welfare?---Yes.

You've given some evidence before your Honour, I think it was the first day, that you said to the effect that one of the most important aspects of the (inaudible) was to show respect?---Yes.

You gave evidence that you yourself, Deputy Commissioner Murphy, and others made phone calls to members to ring and ask, "How're you going" (inaudible)?
---Yes, I did.

That members reach out to each other to support their colleagues?---They do.

And when you were confronted with the horrible concept of member suicide your words were that, "We're a family and we'll soul search wishing we could find a way to deal with it". That is suicide. Do you remember that evidence?---I do.

And in your third affidavit at page 236 – sorry, at par 236, "The NT Police takes the wellbeing of its members and volunteers seriously". And then at 237 and 238 you give some indications, or evidence about what procedures are in place?---Yes.

I'll just ask you this, where does a member go if they have some sort of scepticism about speaking to specialist services who are employed by Northern Territory police?---So if I can give you – they can reach out to peers. (Inaudible) peer support,

they can talk to colleagues. They can – if they wish they can engage their own medical practitioner. They could do a myriad of things.

(Inaudible) directed about what they said to another member, can't they, to give an interview about it?---In what context?

Well, many police officers can be directed to give an interview about they said to another police officer?---Well they can, but - - -

(Inaudible)?---But why would we – in the context of if there was a complaint or something I could understand but not if you're generally talking about wellbeing.

(Inaudible) ask this question (inaudible) but I seriously ask, a member is not going to use professional services of employees and staff of the Northern Territory police. And I'm sure you can understand why they might not – in the particular circumstance where do they go (inaudible)?---Well, they can turn to family, they can turn to friends, they can talk to chaplains, pastors, they can – as I said, they can engage their own private medical practitioners, they can seek their own help. There's no single answer that I can give you that encompasses the factors that you may be able to undertake. You don't have to under – utilise Northern Territory police wellbeing services. It's not mandatory.

I know, that's the problem. Where do they turn? A police officer suspended for three years on a murder charge? Who do they turn to if they don't want to use Northern Territory police staff?---Well, they can consult with whoever they – whoever they wish. We don't force them.

I'm not asking about forcing them, I'm asking about - - -?---Well, you just said a minute ago that you're saying well, we should of – what, sent a psychologist and knock on their door when they're not required, or they're not wanted. I'm not aware of that. We would reach out independently of the executive or anyone else to provide that support. And they do it. They do it frequently. They do it all the time.

Which senior member of the executive in the three and a half years Constable Rolfe was suspended awaiting his trial picked up the telephone and rang him to say, "How're you going"?---Well, first and foremost I think that puts the - - -

Which senior executive - - -?---No, no, no, stop.

(Inaudible)?---I think at the end of the day in fairness – well, in fairness I'm trying to answer that question. There are a number of ongoing legal proceedings that prevented – and it would be inappropriate for a senior member of the Northern Territory Police Force to pick up the phone and discuss it with him.

(Inaudible) ask, "How're you going?" What is inappropriate to ring your member – yes, it's a very serious allegation but with all the stresses that he confronts as a serving police officer what is wrong with ringing him and asking, "How're you going"?---Well, your Honour, I don't think it was appropriate in those circumstances

with what was going on that we do that. And I think we were very conscious and cautious of all the legal proceedings, everything else that's gone on for the last three years, that we were seen to be absolutely acting with a straight bat and to do no action that would impede anything. And that's exactly what we did do.

Do you understand – from my instructions this is a very significant issue for my client – that the entire period of his trial process not one single member, his management team, (inaudible) ever just picked up the phone asked, “How're you going”?---And - -
-

Do you understand the seriousness to my client about that?---Again, I can understand how he sees it but the reality is with all of the legal proceedings that were undergoing, underway we received numerous directives from the union, from the lawyers not to contact him. Don't ring him. He reached out, he did speak to Assistant Commissioner Porter independently. We get another letter, “Don't speak to my client. Don't speak to my client”. So the reality of it is that it becomes very complicated in terms of who do I listen to, where do we go, what do we do.

Deputy Commissioner, are the letters to which you're referring where lawyers say, “Don't speak to him”, simply a response to a disciplinary allegation or checking on welfare?---Well, they didn't say that, did they. They just said every time that he reached out to a senior member of the Northern Territory Police Force we then get further advice, “Don't contact him”. I think from your office. How do we navigate that pathway.

Can you please produce a letter where I had ever advised you not to talk to my client about his welfare?---Perhaps it didn't come from you. I don't know where it come from but - - -

(Inaudible)?---I think we can produce a letter. I think there's stuff that has been provided that, “Don't speak to my client”.

(Inaudible)?---So the confusion exists, in my mind at least, what role do I play in that. Where does the senior executive play in that role. I don't want to prejudice anything that may affect the wellbeing of your client. What - - -

THE CORONER: Given that difficulty that's being confronted in relation to welfare is there in the new welfare review a path forward for supporting a member of police when there are disciplinary or criminal matters proceeding?---Yes – yes, your Honour. And there is. Acting Commander Atkin is his appointed contact person. So it's a senior person in the police, it's not the Commissioner of Police, it's not the Deputy Commissioner of Police. But a senior person is nominated to be their contact point. And they were, and still remain that. Is there not - - -

DR DWYER: (Inaudible) acknowledging, I was just sort of clarifying the evidence that's (inaudible) at the moment.

MR OFFICER: Deputy Commissioner, you were present - - -

THE CORONER: So is that what occurred with Constable Rolfe?---Yes, your Honour.

And that is supposed to remain available for any police officer who is facing disciplinary, or criminal matters, there is a method of - - - ?---An – an officer is appointed, to be his key contact point. Check on his well-being, how they're going. That – that's their function.

MR OFFICER: But you at least appreciate how my client feels that no one from your executive leadership, just asked how he was going. You just appreciate that? ---Your Honour, again, it's a very difficult exposition. I've tried to articulate it as again, this is not done to spite Constable Rolfe, as – if that's what it's portrayed to be. I think it's a very difficult position as a senior executive, with all of the legal processes that are going on, prior to the inquest. I am aware he was receiving – I think at one point it was Assistant Commissioner Beer it may have even been his nominated welfare point. At different points, somebody's appointed to take on that key role. You know, there's a difficulty in terms of being in the senior executive, may have to be a decision maker in a disciplinary matter, and then reaching out to people before those matters are resolved. I think it's – creates a conflict of interest. It's not done to spite someone, or to deliberately harm them. And that's the point I'd like to make.

I think, Assistant Commissioner Beer was certainly present in various days after the incident, before he was flown to Darwin and arrested (inaudible). From there on in, my instructions are, that (inaudible) senior executive (inaudible) check (inaudible). Despite you just saying in your evidence this week, that that's what you do now? ---When they're - - -

(Inaudible)?---When they're injured, yes.

When they're injured?---Yes. So when – if I get a ZZ notification, they've been assaulted, and it's not every instances your Honour, it depends on my availability, and the others, but it is a position of us, that we pick up the – some – some member of the Northern – senior member of the Northern – pick up the phone, and check how they're going. It doesn't mean that I pick up the phone for the next five years and speak to somebody. I mean I'm – I'm very conscious that we're a small agency. We have lots and lots of police, we try and look after them as best we can, your Honour. I - - -

DR FRECKLETON: Your Honour, there's a statement from Superintendent (inaudible) as he then was, on the brief 7-5, which is (inaudible) to communications that he had with (inaudible).

MR OFFICER: Police shootings are infrequent fortunately though, in the Northern Territory though aren't they?---Yes they are.

And so the officer's been charged with murder are rare?---Very rare.

And you're aware, being you weren't there at the time, at the Northern Territory Police at the time Constable Rolfe was arrested, but he was very swiftly (inaudible)? ---I believe there's evidence of that, yes.

He was flown to Darwin. He believed it was on the pre-tenses of then travelling to Canberra. Are you aware of that?---On the pre-tense of going to?

Before he was arrested?---It's my understanding he was flown to Darwin for his well-being. For – for safety reasons. For security reasons.

And then arrested.

THE CORONER: And he did go to Canberra from Darwin?

MR OFFICER: (Inaudible)?---I'm aware he was subsequently arrested, yes, your Honour.

You can appreciate the effect of (inaudible), at that time, those particular facts being publically identified and arrested and (inaudible)?---Again, I can imagine it was very distressful.

And you're aware are you, or are you aware, that he had to move house because of threats made?---I've – I've read that somewhere, your Honour.

And as you noted, middle of last year, Assistant Commissioner Porter, did facilitate attempts for Constable Rolfe to return to work. And are you aware that Constable Rolfe first reached out to try and facilitate that, as opposed to the reverse?---I – I'm not familiar with the sequence of events. But I'm aware that Assistant Commissioner Porter was dealing with this issue, yes.

You directed Constable Rolfe to take leave (inaudible)?---In a formal letter I believe, yes.

(Inaudible)?---Yes.

No longer (inaudible) convening (inaudible)?---No I didn't, because there were still disciplinary matters that were afoot.

Well exactly?---So those – those things, if I may be an officer that's forced to make a determination, I thought it was imprudent or unwise to ring him. I thought it would potentially be a conflict of interest between my role and responsibility as the Deputy Commissioner, and others, in a better position, could provide that support.

And Deputy Commissioner, on my account at least, it's been dealt with ad nauseum and other witnesses, there are at least six s 79 notices my client has been served with I think, May 2021, would you agree with that? Accept that?---If that's the truth, yeah, I accept that.

You've read the affidavits of Assistant Commissioner?---I've – I've read - - -

(Inaudible)?---Yes.

So you'd be aware of the various disciplinary matters?---Yes.

They can be taxing on members?---I'm sure they can.

And you're aware that lawyers get involved, and advice is given, and things become a little litigious?---Yes.

And that's another stressor, dealing with the legal process?---Yes.

And this coronial is very stressful to members of your organisation?---Yes.

In fact, are you aware that Constable Rolfe, when he did return to work, was directed not to attend police stations or gyms (inaudible)?---I'm – I've not familiar with the details of exactly what he was instructed or not instructed to do.

You, yourself agreed yesterday I think in evidence, that this matter has been very isolating to a raft of people?---It has.

Do you think Constable Rolfe feels isolated?---I'm sure it's been very distressing for him, yes.

In fact, you were here yesterday when Sergeant Nankivell gave evidence, weren't you?---Yes.

And 28 years later he still suffers the trauma (inaudible)?---Yes.

Constable Rolfe's a 33-year-old man now I think (inaudible)?---Yes.

And you would appreciate that the traction of all of these matters, (inaudible), very (inaudible), you appreciate that?---Your Honour, I that needs some clarity and concept. Some of the protractions are beyond the capability of me, personally. And I think beyond the capability of the Northern Territory Police Force as a whole. They're legal processes, they are well – they're well resourced. They're going down a significant legislative framework. I can't influence those timelines, your Honour.

Did you speak to or ring Sergeant Nankivell after yesterday?---Did I what?

Speak to or ring Sergeant Nankivell?---Spoke to Sergeant Nankivell here, as walked out the door.

After he left?---Yes I did.

While he was (inaudible)?---If I could, yes.

See how he's going?---Yes.

And do I understand your evidence to be that you're not going to contact Mr Rolfe to see how he's going?---There – there's still, your Honour, there's still a raft of issues surrounding Constable Rolfe. And you know, if I can reflect on some of the things that are in the public arena, I don't – you say he wants to speak to a member of the senior executive, I - - -

THE CORONER: But in any event, there is an allocated person for his welfare?
---There is, your Honour.

And (inaudible) phone call in relation to his welfare, that allocated person was available?---Twenty four seven. And – and the full extent of our - - -

An allocated person contact Constable Rolfe's lawyer to find out whether or not there is a conduit there, for contact to be made to you to find out how he's going, and whether or not there's any other assistance that can be offered?---We can do that, your Honour.

MR OFFICER: That will be continue to be offered to Constable Rolfe?---Yes of course.

As a member - - - ?---Whilst he remains a member of the – and post, I'm sure, there's that facility.

THE CORONER: One thing you didn't mention in one of your answers, and I think it's available to police, but I'd like to have it confirmed, is ESA, E-S-A?---E – Employee Assistance Program.

Yes?---EAP, and there's I think ESS was a a service provider that - - -

Right, and they're not employed by the police are they?---No.

They're an independent service - - - ?---And can I – for all those - - -

- - - (inaudible)?---No, your Honour. And for all those that are listening, even with our own in-house psychologist, they don't provide information back to the executive of the Northern Territory Police Force about details of people that they – that they are providing counselling and support for. That's not their role. We don't seek that information.

So there is an outside service available - - - ?---Yes, your Honour.

- - - for police.

Yes, Dr Dwyer.

DR DWYER: Thank you, your Honour.

REXN BY DR DWYER:

DR DWYER: Deputy Commissioner, I'm just going to pick up on some of the questions that you were asked by parties today. Firstly, two issues in relation to the deployment of the IRT on 9 November, by way of clarification. You were asked some questions about communication breakdowns, or possible communication breakdowns. And you've given evidence that it's your understanding that Superintendent Nobbs and Assistant Commissioner Wurst were both very clear this was general deployment, it was not a high risk deployment pursuant to the IRT SOPs, is that right?---That's – that's correct.

And you sat in court, didn't you, to hear the evidence of Superintendent Nobbs and Assistant Commissioner Wurst in that regard?---Yes.

Superintendent Nobbs gave evidence, for example – and just for the benefit of the transcript and those listening at transcript 1102 to 1103 – he said the purpose of the arrest was twofold, to assist with general duties in the context of breaking the back of the property crime issue, giving the community some broad based reassurance, and providing a respite opportunity to the members who'd been working over the preceding three or four days, and to assist with the arrest plan for Kumanjayi, is that your understanding?---That's – yes.

And when asked whether it was a high risk deployment he said, "Certainly not by my assessment of things. There was a heightened sense of risk with Kumanjayi but in terms of looking at the term high risk through the lens of this SOP", standard operating procedure, "Is a trigger. No, he wasn't high risk within that context"? ---That's correct.

And Assistant Commissioner Wurst gave evidence on 5 December 2019. You listened to his evidence?---I did.

And he said, "As I understand it would not normally require assistant commissioner approval to deploy in these circumstances because there was no high risk element at that time"?---Correct.

Was that his evidence?---Correct.

And he said, "The reality is it wasn't a high risk. In my understanding there's no communication that it was a general deployment". That's the basis for your evidence – well, a few days ago I think now, that, "It's my understanding there was no miscommunication, that it was a general deployment"?---Correct, your Honour.

You've given evidence about the involvement of Derek on the night and I just want to clarify with you, some of the evidence that Sergeant Frost gave about her relationship with Derek - - -?---Yes.

And it's important, as you know, because Derek and Warren and family members are listening to this evidence and it's important to them?---Yes.

Sergeant Frost described Derek like this. She said, "We had a very good relationship". This is on 21 September, at page 778.

"Derek was invaluable to me. He wasn't always available. He would always tell me though if he couldn't assist in something because of a poison relationship or something like that. He would tell me. But he was really valuable. And particularly when there was a lot of disturbances going on in the community. I think just Derek's near presence has really helped and can calm a lot of the people because he can then communicate with them in language. He knows and understands a lot of why something has happened. And he knows relationships".

And she goes on to talk about him being incredibly valuable?---Yes.

In terms of valuing the work of ACPOs to the work of constables do you recognise that an Aboriginal liaison officer or an ACPO will have a deep and valuable level of knowledge that could never be possessed by somebody who's not an Aboriginal person?---Yes, I – I accept that as a golden principle and the reason we are embarking on the pathway that we are.

And that needs to be valued, doesn't it, in the same way that you might value other technical skills?---Yes.

And I'm not going to tell you how you should remunerate ACPOs or ALOs here, but do you appreciate that there needs to be ongoing review of the salary structure to make sure that that deep and valuable knowledge is properly compensated?
---I accept that, yes.

In relation to the challenges that ACPOs and ALOs might find themselves in, Sergeant Frost alluded to the fact that Derek would be open with her where he needed to sit out of an arrest. Do you recognise, given your experiences, that there might be experiences of conflict with ACPOs or ALOs?---Yes.

And sometimes – and there'll need to be good lines of communication with ACPOs and ALOs, and police?---Yes.

Are there any resources, for example protocols or training, to help police officers, ACPOs and ALOs navigate those (inaudible)?---I think, your Honour, we've reference the mentoring program that – within my affidavit as a commencement of some sort of pathway so we can provide that mentoring advice. You know, I can imagine it's very daunting coming in as an ALO from somewhere into a – all of a sudden you're working in the police station around people that aren't familiar with processes, all those things. So I think the mentoring program's one way. And that's a two-way street in terms of we have to educate our police officers as well what roles and responsibilities we expect of our employees. They're not police officers, and

even if you are an ACPO if you haven't got the necessary exposure, experience, to rely upon other means. So no, I think it's a really important point. But I think, as I've tried to highlight, your Honour, we're on the beginning of a pathway. There's no finalised system or place that's been tested as the best way yet. Communications is a key.

If you're an ALO or an ACPO from the community, working for the community it's particularly invaluable, isn't it, because you've got a depth of knowledge and language of them?---And – yes, that is correct.

But also might present particular challenges with (inaudible)?---And it – I'm sure it does, yes.

Would you be open to giving consideration to a written protocol developed, obviously, with the assistance of your Aboriginal staff – or by the Aboriginal staff – about that?---No objection at all.

Do you agree that Derek, if he's willing to, might be an excellent resource for you in that regard, in identifying the best resources?---At – dependent on locality and culture is appropriate to that place. I think the key is really trying to identify who's the best person at a given place. But certainly at Yuendumu, he'd be a marvellous resource.

So in terms of the induction manuals that you now have locally might it be helpful to include a segment on that on how to deal with conflict and who to reach out to to (inaudible)?---Absolutely, yes.

Perhaps while I'm dealing then with the induction manual – I appreciate that your evidence of that this is a journey and these are not fixed documents. Mr Boe took you to a document which is in our brief at 12-4, and not all of that needs to come up but I'll just note that Mr Boe was asking you some questions about what's in the – in this general induction about the Coniston Massacre and you acknowledge that you've memorised the document. But you accepted that there was nothing specific in here about the Coniston Massacre?---Correct, your Honour, and I'm not sure what date that's – how recent that document is.

I just want to take you to some – I appreciate you might be open to including this evidence?---Yes.

That document notes that – unfortunately, some of this I'm reading from and some of the history in Australia involved a number of massacres that many Indigenous people still feel strongly about, and this has resulted in suspicion of police being passed down through families, and a resentment of white authority. So there is acknowledgement of that in that general induction?---Yes.

If I can ask you to accept from me that within the timeline that Mr Boe took you to of his – with the historical overview there is included in that history, including the

Bidjigal Resistance in New South Wales, the Myall Massacred in 1838, evidence of the Stolen – well, (inaudible) about the Stolen Generation, the Wave Hill Walk-Off?---Yes.

They are things that many Australians are ignorant of, aren't they?---I suspect, yes.

And it's a very important lesson for Northern Territory police to learn as part of their induction?---I think it's very valuable, yes.

I think the point that Mr Boe was making was that although it references a number of those important tragic historical evidence there's no specific reference to Coniston, which is a particular tragedy for the Northern Territory?---Yes. Yes.

Would it be appropriate to include it in that general induction?---Yes, I think it should.

In the induction into Yuendumu, which I will ask to come up if you don't mind. 7-120(b)(b). It's the annexure to the deputy commissioner's statement and it's page 6. Again, there's some evidence specific to history, and the local history. Page 5 of that document does refer to the tragedy of the Coniston Massacre and it notes that the conflict and reprisals that followed the Coniston Massacre in 1928 resulted in dispersal of people from their traditional lands and constitutes an ongoing source of trans-generational trauma for Warlpiri People. But that's an important recognition in that local document, isn't it, Deputy Commissioner?---Yes.

THE CORONER: It's on page 6 of that document.

A PERSON UNKOWN: Yes, on page 6. (Inaudible).

DR DWYER: That's all right, we can – if you can get that back up again, because I want to point you to a deficiency in the document and I'll ask the deputy commissioner to reflect on that. Page 16 and 17 has "Community Contacts". Just scroll down if you will please, Bec. Can you have a look at those community - see "Community Contacts" and if Bec would scroll down to the next page as well. I think you will notice, Deputy Commissioner, that there does not appear to be any Aboriginal people listed as part of the conference? If you will accept that from me and into the next page as well?---Yes, your Honour.

Clearly there should be community contacts that are in Aboriginal organisations and key contacts?--- I would have thought at a local induction there should be some key contact points. Primarily a lot of the stuff around this induction package is around emergency management and that so - where you see about the fire captain and, you know, flooding - fires - in terms of getting resourcing to assist them, but I agree, there should be some and if it's not written in a formal document I think when you reflect when we're out at those localities, Dr Dwyer, we see on whiteboards and all the pen - they're all the local contact numbers.

All right, thank you?---There should - it should be captured and formalised.

I take it you would be open to any suggestions from those people at the bar table who are scrutinising that document as to how - -?---The better feedback we get the better the document gets then we can use that, your Honour, as a better template for the others that are works in progress as we advance it because I think, as I said, we're open for anything to suggest to improve our process.

I will just make this point about that document. It does specifically refer to the fact that this inquest has highlighted that racism has been exposed in the Northern Territory Police Force in a small number of officers?---Yes, yes.

You don't shy away from that?---No.

(Inaudible)?---No.

Deputy Commissioner, perhaps while I am on that topic, we are going to hear from Assistant Commissioner Porter about a number of disciplinary processes more broadly. In his affidavit at 7-11D at par 82, he - you don't - that doesn't need to come up, that's just a reference - he identifies that there have been a number of officers outside those identified from Constable Rolfe's phone who have been disciplined as a result of racist communications. Do you recall that?---Yes.

Some of those have been suspended for a period of time. Some of those have resigned during that process, yes?---Yes, yes.

It's going to be an ongoing process isn't it, for the Northern Territory Police Force - perhaps all forces around Australia - to be vigilant, to stamp out racism where you see it?---Absolutely, your Honour.

Your response to it, in terms of the disciplinary process, will depend on the circumstances of each case, won't it?---They will, yes, that's correct.

And will they also depend on the response of the member once that conduct is identified to them?---Clearly. I think that's the heart of that process - acknowledgement .

So if, for example, you had an isolated incident - I am not downplaying the seriousness of any incident involving racism, but if there was an isolated incident, somebody was under enormous stress when it happened, they were incredibly remorseful, they expressed their remorse and regret, they were prepared to do whatever training was required to ensure that never happened again, that would all be something that went very much in their favour?---And those factors would be taken into account, yes.

And you would be offering that person your support, wouldn't you, to address their behaviour?---You mean my personal support or the agency's support?

The agency?---I think the agency as a whole would hopefully, yes, we encourage - in the perfect world - those people to talk and communicate frequently what their

exposure was to share with others so we share that, you know, the impact of it is, and again already I think I've highlighted for this inquest process where people here at Alice Springs and, as I said, Bradley Wallace, his evidence was just powerful in terms of perhaps where people hadn't looked at the consequences of their text messages and you hear it from somebody how deeply it affected them. I think they are really good, the Bradley Wallaces of the world and those others within our agency that can help share that message will shape us into the future I think.

In your final affidavit, on par 62 you talk about the leadership that has been shown in relation to text messages - racist text messages that have been revealed. At par 62 you say that, "The police force has taken and is taking a number of active steps to address racism, in appropriate behaviours. It's particularly focussed on ensuring that members of high rank and leadership roles are aware of the standards of behaviour." As the Deputy Commissioner, what was your response when you found out that there were sergeants involved in the exchange of racist text messages (inaudible)? ---Well, I was confronted just - to be blunt I - initially, I was speechless. I didn't think in 2022 or - that I would be reading, you know, of Northern Territory police officers of all - you know with - we're the one jurisdiction where we deal with the most vulnerable Australians all the time and when those deep-seated views - or when they're exposed, just surprised me greatly and shocked me.

So you go on to note at par 63, "During 2020 and 2021 the Commissioner of Police, Deputy Commissioner Murphy and yourself met personally with each member of the rank of senior sergeant, superintendent, commander and assistant commissioner? ---That's correct.

That was in Darwin, Katherine and Alice Springs?---That's correct.

There were a number of reasons. That included trying to enhance the relationship between the executive and those - and operational officers?---Correct.

And also to drive cultural reform including in relation to your expectations around racism or stamping out racism, correct?---Yes.

And following those meetings and base in part on the decisions that were made about opportunities that could be a development (inaudible)?---Yes, well their future - their future development, where they'd like to go, what rank they want to be, what they saw the future of the Northern Territory Police Force.

Can you tell her Honour how were those meetings received by your senior officers? ---By and large I think they were extremely well received because, as I indicated, they were accompanied by a workshop led by Assistant Commissioner Wurst and others around Project 2030, which was a strategic direction of the Northern Territory Police Force. It was an opportunity for people within those ranks who were present, to talk about the very issues we've been discussing in this place, their journey, what they've seen. I heard really powerful stories from different ranks who would stand up and talk about areas of our agency, areas of their career that they thought hadn't been as effective of others. They were very open. In my - I said in my whole career

the ability to get a commissioner of police, two deputy commissioners of police and others in any one moment in time is a really - was a really rare event and for us to be able to - as a collective - to make time to do it with every member from those ranks up, I still maintain is probably one of the most powerful things I've been involved with and I think it was very well received by the workforce, for those officers that we spoke to, and they provided very frank and fearless feedback to us.

You go onto note that you - in October 2022 the Commissioner of Police commenced meeting with each of the 195 sergeants in relation to the same matters? ---That's correct.

And at; the time of writing your statement the Commissioner of Police had met with 23 sergeants and that work continues?---That's an ongoing scope of works, your Honour. He's in Alice Springs at the moment, so I don't know how many he's had the chance to do down here.

A broadcast also went out to all officers that the use of racist, misogynistic, disrespectful, homophobic and sexist language is reprehensible contrary to the Northern Territory Police Force Code of Conduct and Ethics it constitutes a serious breach of discipline?---That's correct.

So no officer could be under any illusion that this is conduct that will not be tolerated by the Northern Territory Police Force?---And it will be treated as a serious breach of discipline under the provisions of the Police Administration Act.

Your statement makes it clear that the broadcast sent to all officers stated that, "The Code of Conduct and Ethics does not provide an exemption for private conversations that involve expressions of racism misogynistic, disrespectful, homophobic and sexist views. They are incompatible regardless of whether they are private or public"?---Correct.

And you tender it as such, correct?---Correct.

It's important for the culture of your organisation that everybody is on the same page about those expectations, isn't it?---I think so, yes.

And important for the morale of all officers?---I think intrinsically all of these issues link back to morale, yes, I think it is really important that they know that - how we're going to treat something, and what our expectation is, and I don't think you can be tip toeing around the issue. You have to be frank and tell them exactly what we expect, and then hold people to account.

Particularly important for your Aboriginal staff, I imagine?---Very important, and your Honour, I think it's 34 percent of our agency that identifies either female or Aboriginal. It's a significant portion, therefore I think they deserve respect.

On 23 February of this year, Constable Rolfe published an open letter. He's still a serving officer, correct?---He is.

Still on the payroll, correct?---Yes.

And in that publication, he says,

“I’ve been painted as a racist, violent cop. I went to a boys’ school and then joined the army. My playground language is sometimes crass and rude, and most would find it offensive. But I use it in private with no intention to harm, with others who understand this.”

Is that an excuse, to use it in private?---Under the instruction we’ve just provided, I don’t accept that as an excuse. No.

Is it consistent with the Northern Territory Police Force Code of Conduct (inaudible)?
---No.

Is it completely contrary to a publication of the Northern Territory Police Force?---Well it’s contrary to our values, as we’ve expressed them, your Honour.

He goes on to say, “I’ve used rude and racist terms regarding nearly every race, most often my own.” Is that an excuse? If you use rude and racist terms about everybody, if you’re Caucasian?---I don’t believe so.

He goes on to say, “When I have used these terms in the past, I’ve used rude and racist terms regarding nearly every race, most often my own. I’ve done it in private with others with a shared background. I should not use these terms, and I’m sorry for using them.” Would you like me to read you the remainder of it as well? I’ll read the entire.

MR OFFICER: I’m not sure if my learned friend is proposing to ask anything further of that document. We’d request that she refrain from doing so, because there are some issues arising from it which are live, and the Constable has been required to provide an account of his conduct in writing this document, and he is due to provide that account by Sunday, and it is possible that other matters will ensue after that.

DR DWYER: I’ll ask a different question, your Honour, involving that actual publication. But for the benefit of my friend, I think, would you, Mr Officer, like me to read the conclusion of that whole paragraph?

THE CORONER: Without asking a question. Just to ensure that it’s accurately presented?

MR OFFICER: That’s right. It is (inaudible).

DR DWYER: All right. I’ve read those terms (inaudible).

If somebody was to suggest that it was acceptable to use racist language in private with your friends, if you didn’t intend it, would that be consistent with the code

of conduct in the Northern Territory Police Force?---It's still inconsistent with that instruction we've provided, your Honour.

One of the things in terms of mental health of officers that we've heard is important, is their sense of camaraderie amongst officers. You would accept that?---Yes, your Honour, very team based.

And you anticipated my next question, important for any team really, isn't it?---Yes.

But particularly when you're doing the really difficult challenging work of a Northern Territory police officer?---Yes.

In terms of morale, where police officers attack each other in public, does that in itself affect morale adversely?---I'm sure it does. I'm sure the whole environment creates numerous communications. It creates divisions between the agency that we probably don't encourage, we don't want, we don't need. It undermines the executive, it undermines leadership at every level, I think.

Are you aware that in the wake of Constable Rolfe being charged with a criminal offence, there were public attacks on officers like Sergeant Frost?---Yes.

Sergeant Barram?---Yes.

There were criticisms of Lanyon Smith and Chris Hann in public?---Yes.

Are you aware that that adversely impacted their wellbeing and their (inaudible)?

MR OFFICER: (Inaudible).

DR DWYER: Sure.

I think on the website, I Support Constable Rolfe, there were a number of criticisms that were extremely aggressive in nature, weren't there? Of other officers?---Yes, including myself, Commissioner Chalker. I think everybody who's walked within senior leadership roles has been denigrated, abused. It's just been disgusting.

Particularly abusive in terms of Sergeant Frost, a female officer in your ranks?---There's been some horrendous things written, yes.

And have you come to understand that that has had an extremely distressing impact on a number of your officers?---Yes, your Honour, and I say this for everyone's benefit, including Constable Rolfe. No one's walked away from this process without some emotional and psychological damage. That'd be my assessment. It's been a very, very traumatic, difficult, confronting incident, and you know, it's been challenging for the Northern Territory Police Force as a whole.

And you would include in terms of understanding the adverse impact - you would accept, wouldn't you, what Mr Officer put to you that the charge in process and the investigations are likely to have been distressing for Constable Rolfe too?---Yes, your Honour. I'm sure they were.

Is it in any way appropriate for any officer faced with any investigation to attack another officer, or for others to attack your officers, because they're somehow involved in a process?---In my view, no, your Honour. I mean the reality is if it is another critical incident, a tragic incident such as this, and that's probable or possible, we will appoint investigators. We will appoint people. They don't get a choice in what response is to be allocated. We don't ask them, you know, do you want to do this particular task. They get sent there, and they, if they have a conflict of interest, they make it clear. But generally we expect them, and I'm sure as does the community as a whole, expect Northern Territory police officers to act without fear and favour, and go and do, you know, a thorough and competent investigation, regardless of it. But it is very, you know, I do know that cohorts of specialists were very challenged and disturbed that the social, particularly in social media world, attacking their credibility, their professionalism, you know, right down to appearance. It's really been quite disgusting. That's the only word I can use.

I don't know if you recall when Sergeant Barram gave his evidence, but he talked about the thin blue line, and what really affects the thin blue line is when officers attack each other in that way?---Yes, I agree, your Honour, and as a small police force, unlike some of the larger police forces, we are predominantly built on relationships. Friendships, relationships, everyone works everyone else. Everyone who knows and works and lives in the Northern Territory know you, know everyone else. It's a very, you know, really it's a very small place. It's particularly heightening and distressing I think in a smaller place, and it's very challenging.

In terms of a different topic, the IRT, there were two reviews at least done in relation to the IRT after Kumanjayi's tragic death. One you've referred to the report of Officer Beer on 27 November 2019, and then there was a more in-depth review by Officer Shaun Gill. Both of those are attached to your affidavit of July 2022?---Yes.

They identified deficiencies including the absence of appropriate risk assessments, for example?---Yes.

And soon after Kumanjayi's death, the IRT was disbanded, and you've given clear evidence it is not to be reconstituted?---That's correct.

The reliance now is on the TRG if there is any high-risk incident?---That's correct.

I anticipate that we will hear some evidence, that there are some police officers who are concerned that Alice Springs might be left without an effective TRG component because of the tyranny of distance. Is there any consideration about that? Or what's your view?---Well, your Honour, within our current resourcing footprint, there is no capability for that. I think the Northern Territory Police Force would open to it in the future, if we had a greater resourcing capability, that we would consider that. But at

the moment, it's not on the table. I am aware from my exposure and experience across Australasia, that not every jurisdiction has multiple tactical or TRG teams throughout their jurisdictions. And at the moment, we think its most appropriate, and our current submissions around additional aircraft, pilots, all relate to our ability to have a response model, out of Darwin, in a quick and appropriate timeline.

In relation to the questions that you were asked by some of the family for – sorry, some of the lawyers for families, and also by Mr McMahon for Parumpara, about the carrying of guns. You've – I'm not going to ask you to go back over your evidence about that. You've given evidence though, that there are some circumstances, where clearly police can use their discretion to not carry a gun, going into schools for a chat with kids is an obvious one isn't it?---I think there's been some evidence led, and again, as I said, your Honour, and Dr Dwyer, you know, we're not out there every day policing our police to make decisions about what they think is appropriate at any moment given in time. The general order is designed around our operational footprint to provide safety and security for the police and the community. The order says you'll carry them. But I'm sure there will be at times, when it's not appropriate to do so.

And you would allow for an exercise of discretion in those circumstances?---Again, most of the times, it will never come to me anyway. I won't know about it.

Sure?---And officers will go about their duty as they've always done.

Would you be open to considering, some sort of protocol or General Order, that had a carve out for circumstances where you would not carry guns, and you – and a protocol that would be developed, in consultation with the Aboriginal communities? ---I'm not fundamental opposed to that. I just think, your Honour, there's – the circumstances where that may exist is going to be very, very difficult to define, to articulate, to identify. I'm – again, I've got no issue around the community themselves speaking to their local police and coming up with solutions. They did – I mean maybe we're not going – when there's – onto law ground – I mean we complied with lots of local cultural sensitivities anyway. But again, as a general principle, we are – the Order is, that you will be wearing all your safety and accoutrements.

THE CORONER: So that's the general principle, but it could – there could be also scope for agreements to be reached, for particular circumstances, where guns are not required?---Again, I think the mutual respect agreements provide an opportunity where we can explore that further. I'm not – I'm not prepared, your Honour, at this moment, to come up with a hard and fast rule.

We're not asking you to, but you're open to the possibility of exploring whether or not there might be some specific local agreements reached, where there might be occasions where it might be possible to agree that guns would not be worn?---Again, your Honour, I am in principle. I think that those types of incidents in my mind, there may be one officer who would go to a school, or two. But there are others would be

available for rapid deployment, and they can carry their guns, as normal, for example.

But we've already talked about the school situation - - - ?---So – so it might be, yeah.

- - - and it seems like it might be a starting possibility for that kind of discussion?

---Correct.

DR DWYER: Because here's another carve out's, Deputy Commissioner, that you might consider, and I'm not asking you to agree to them in a witness box. But just to give you some reassurance about examples. Meetings with Elders and the leadership team. Obviously you don't – you're not going to need to carry a gun in those circumstances?---If it's done – (inaudible) your Honour - - -

THE CORONER: You don't have to respond, it's just (inaudible) - - - ?---If it's at the police station, if they have them at the police station, that'd be a good start.

DR DWYER: If – if – I hear what you're saying that you are not closed off to the possibility - - - ?---No.

- - - of these discussions?---No.

And mutual respect agreements are the appropriate way in which to negotiate?---To commence – to commence that discussion.

We heard from – when you were giving evidence on the first day, when Dr Freckleton was asking you some questions, you gave some evidence about the increasing crime rates over a period of time - - - ?---Yes.

- - - in Alice Springs?---Yes.

And then a significant decrease, in some good news, as a result of the introduction of alcohol restrictions?---Yes, I – unfortunately don't have that data, but there's – again, as recently as this week, I'm talking to police in Alice Springs about the impact.

And you have – it also referred to the words of the Commissioner, and echoed them, that there are complex traumas that the Northern Territory Police Force is asked to deal with?---Yes.

And you can't police your way out of the complexities that are caused from colonisation and – and decades of discrimination?---I – your Honour, and I think Dr Dwyer, the term I used is we can't arrest our way out. The police, I think – policing provides a lot of other solutions, other than physical arrest, but I think, as we've discussed doctor, prisons are full. We – police have been extremely busy exercising that dimension of their responsibilities in law enforcement.

And we heard from Senior Constable Wallace, you were in court when he gave evidence on two separate days?---Yes.

Did you agree that his evidence was extremely thoughtful and insightful about some of the complexities?---Very impressive.

And he talked about the challenging work environment for officers, that officers are often dealing with children in the early hours of the morning, some of whom might be cognitively impaired. Some of whom have backgrounds of extreme trauma, and in terms of the cognitive impairment, it might affect their ability to make decisions under stress, very challenging for police in those circumstances?---Extremely challenging.

He also said this, he said "I think the police are always the last port of call to deal with difficult situations. So a lot of the offending happens at night time. It's the police who are out there, dealing with these young, vulnerable people." He also said, "I think on the whole, from what I've seen from working with Strike Force Viper in the last six months, where the bulk of young people's property offending is addressed, it's done in a professional and effective manner." He said,

"At 3 o'clock in the morning, when we're dealing with a 15-year-old youth, who's committed offences, who's cognitive impairments, or impairments due to FASD, we don't have on-call capability to ask for Territory Families, or any other support services, to come and help. It's left to police."

What in an ideal world, would police like, to be able to help them to deal with those difficult circumstances?---Well I think, your Honour, this has been the subject of much debate. Many inquests. Lots of discussion. In a perfect world, we would have support services. You'd have safe places for women and children. You would have ability to disengage from a policing model to get someone else to pick up that issue. So you could focus on primary issues around lawfulness, the fact is, they don't exist. And I think in that sense, my earlier commentary around additional resourcing, is because we are the only in-field, 24/7, 365 days a year service provider in the field. And unfortunately, we are the first port of contact, and I – I use that terminology, the only government agency who'll go anywhere, anytime, to do anything, it seems to be, we are asked to do everything. That weighs heavily on our membership. It weighs heavily upon our officers who are called upon to make really difficult decisions, around really complex issues. Where our primary training is around law enforcement. And with all due respect, you don't – I – you can't expect police to do anything else if that's our fundamental training. To their credit, right across the Northern Territory, our men and women are out there doing amazing work, in all these issues. And they are providing really responsive and appropriate care, with people who often don't want it. Who are affected by drugs, alcohol, and it's challenging. I can't understate it enough. And the – the increase in demand that I talked about over the last decade, is a real thing. The – you know, our – our work force are challenged by it. Because unless there is some other mechanism that steps in and breaks that demand cycle, I can't see any change shortly.

What you'd like to see, ideally, wouldn't you, is a reduction in the amount of behavioural problems you've got to deal with, and therefore, you need fewer police, ideally?---Well I think that's the long-term aim. But I think it's – it's a bit of a cart and a horse. And again, if I can talk in a generic principle, we've heard lots of evidence, even in this place, about unrest, safety in community. If you don't have sufficient numbers of police in the first instance, to provide that safety and security, my better experience, and long-term experience, you won't be able to recruit teachers. You won't be able to recruit health professionals. You won't be able to get other people to go to the community, because the artificial creation of it's a dangerous place, we can't go there. And the first step in my mind, is to have – create a safe environment for everyone.

We've recently seen in the news some recognition of the need for better resourcing for the community of Alice Springs. Are you aware of any resources coming in to assist police from a welfare perspective?---Again, I'm not aware, your Honour. I focus heavily on what the police response should be and how we could better resource our Alice Springs here. I haven't significantly studied what the additional resource component will be but I do know they are looking around those support services to provide additional support.

But are you aware of high-level meeting between the Commissioner, for example?---Correct.

And other agency people, to get better resourcing in to help the community?---I am aware the Commissioner of police is meeting with all key stakeholders including Northern Territory government and representatives of the Commonwealth government to look at how we can better coordinate - coordinate services one, and resource services better, so they are ongoing as we speak.

Do you know, and if you don't we will no doubt have an opportunity to get more evidence of this, whether or not those resources beyond police but that would assist police include things like bail hostels for kids, support services for the victims of domestic violence, welfare services for young people who find themselves homeless?---Some of which I am aware, even as recently as the announcement when the Prime Minister was here, I think there was \$2m announced for, I think Tangentyere Women's council, again for family and domestic violence. I think there's an allocation for Northern Territory Police around family and domestic violence. I think, without reference to that publication, I can't - and what I've seen previous, I can't quote the figures but there is certainly provision for some of those others, where they go, that would be decided others outside of police.

In line with the evidence you've just given, do you accept though that additional resourcing is required in communities for agencies beyond police to be able to assist?---Yes, I think - I do agree with that and I think, again, my exposure and experience has been in addition to just having additional resourcing there needs to be greater coordination of services because again, most of those service providers operate between 8:00 and 4:00 Monday to Friday at best, that's not necessarily the operational footprint when they're needed and I think there needs to be much more

responsiveness to when we have availability to provide support services. Health, education - I mean for every time there's a child out at 3 o'clock in the morning they're not going to school the next day. You know, it's a whole joined up approach we need and it's complex and it's a wicked problem and it's been ongoing not just in the Northern Territory but it's been ongoing my whole adult police career. And we've yet to - been able to find a solution unfortunately.

Do you recognise that part of the - and a very important part of the solution is empowering Aboriginal communities?---Yes, your Honour, and I think we are advancing through that pathway now more than we have ever done and I suspect we won't reap the benefits of any of those for some time, but I am committed that I think that is part of the future direction that we will - the whole nation will go down.

Last topic Deputy Commissioner, is in relation to the recruitment and reappointment of officers. You've noted in your last affidavit "The recruitment and reappointment general order is being drafted and I think was expected by 31 August 2022". I might have read your middle affidavit in that regard. The question I have for you is in relation to the recruitment?---Yes.

Has the focus on some of the challenges for Alice Springs made it difficult to recruit? ---One of the things, I think Assistant Commissioner Porter might have greater specificity on the number but we have successfully recruited above attrition since my appointment in the Northern Territory, so we are attracting - and I think we've graduated over 300 plus recruits in the last three years, or since 2020. It's been significant. It's probably been effective. But again, balancing it off, and I've touched on it briefly, we have every jurisdiction in Australia have got jobs everywhere and it's a competitive marketplace for experienced police officers and the skill set that we have here is very attractive elsewhere, you know, to recruit someone in who's got those experiences and background is really really helpful.

So what do you want to say, while you've got the chance, to potential recruits about why working as a police officer in the Northern Territory?---So, again, I think - and I'll say it publicly for all of our police officers out there, right across the Northern Territory, it is in my - I'm still here. I'm still policing, probably not at that front end anymore, but the ability to work in remote and regional locations and be that point of call to help the most vulnerable Australians is probably the most rewarding thing you'll ever do in your life. I think it's a rich journey. I think you learn as you go, it's on the job. The places you go, the things you'll see, the people you'll meet are just extraordinary. And if they're looking at me, it's just been one hell of a ride and I would encourage everybody that - to embark upon a career, it's a fantastic career and it will take you many places. And I think come onboard, come on up, we'd love to have you.

Those are my questions, your Honour.

THE CORONER: Anything arising, Dr Freckelton?

DR FRECKELTON: Yes, thank you. I'll be very brief, your Honour. I tend to concede (inaudible).

REXN BY DR FRECKELTON:

DR FRECKELTON: You've given evidence that the Commissioner about the stressors for members of the police force in these proceedings and the adverse publicity in certain parts of the media and on certain websites. Has it been particularly difficult for the indigenous members of the force?---I'm sure it's been very difficult. I think it's had an effect and we've already heard that evidence in here. All of a sudden people you work with you think are thinking of me and my family, people I knew and trust are thinking of me differently. If they really held that belief, why did they be my friend. I mean I think it touches at the very outside of just wearing a police uniform, I think it touches upon your personal relationships and how you'd feel. It would be very distressing.

Aside from anything else, aside from the reforms that you identified in exhibit 12-2 of your affidavit is that there is quite an amount of feeling that needs to be done within the force?---Yes, your Honour. And again, for every police officer that's listening out there, for all of us, it's been a really significant impact upon the Northern Territory Police Force. It created deep factions early in the process. It has attracted voluminous material, positive, negative, abusive. There's no winners anywhere that I can see in any of it and I would urge that we take the learnings from this inquest, the good and the bad, what we did right, what we did wrong and adopt a bit of warts and all approach and try and find a way as an agency to be better, to make sure that we try and prevent it ever happening again. That we move forward, I think, you know. The reform process has been under the cloud of this whole inquest my entire three-year journey in the Northern Territory Police Force. And on behalf of all of us, I think we're all very, very keen that we can move forward and take the learnings and on behalf of the senior executive, your Honour, we await your findings and we will take them onboard and we will can do whatever we can to be a better police force. And as the last thing, you know, it's been – I've been in this witness box for probably the longest I've ever been in a witness box in my career, your Honour, but I mean it, we'll come back anytime to sit here to listen to try and find a way to be better. Regardless of the difficulty and the time that it takes, I think it's absolutely critical for us as a police force. So I thank you and everyone here for the opportunity to provide some evidence and I hope it's of value to the inquest.

My learned friend for Mr Rolfe has suggested that perhaps it should not have been you but it should have been the Commissioner of Police who was giving evidence over the last week. You've been taken effectively off line during the currency of this inquest to sit here to listen, to respond, to write affidavits and then to be the voice of the force, is that right?---Correct.

Would that have been feasible for the Commissioner of Police?---Absolutely not, your Honour.

You've been asked too about the – whether the executive of the Northern Territory Police Force should assume responsibility for assessing risks for any given operations such as an arrest of a person. What do you say about that?

MR OFFICER: I said in every operation, conflicts are (inaudible) incidents which followed (inaudible) - - -

DR FRECKLETON: That would be the case.

All right, you've heard what's been raised. After an incident such as where a member of the community has used a weapon by way of threat, and there's been a response of the kind that there was from the two officers, is that a scenario which the executive of the police force should be engaged in assessing risk?---Your Honour, I would like to say it's a rare event. In the three years I've been here, I've received, and we receive countless notifications of members of the Northern Territory Police Force being confronted with numerous weapons. We have police officers that respond to community unrest. I think there's been a number of murders where cross bows, bolts, machetes, guns, weapons have been fired, all have responded to by local police, general duties police officers. The escalation in terms of a policing structure, from the bottom up, we don't have a TRG, and superintendents and commanders and assistant – in every locality. We rely and trust upon our work force, that they respond first, and then we escalate the matter up. And then more police, more experienced police, specialist police, come as that matter escalates, up through the chains of command. It – it happens that way in every police force. And I take on board what Mr Officer has said. But we would receive notification, I just want to make the point, your Honour. It's usually after we've responded that I would get it, unless there was a specific need, they needed something from the chain of command. The delegated authorities that come down the rank to try and get the right people at the right place, to make the right decisions, as quick as we can, and not have to force it up and down a narrow pathway, to get senior cops to approve routine policing. If it's really, really high risk, TRG would be deployed, and an Assistant Commissioner will make a determination to approve it. And he won't approve it until such time as he's satisfied himself on their plan, what resources they need. That information doesn't come up, all the way up through every chain of command. It goes to those specific people. And hopefully that provides a bit of clarity.

Would would happen if the seven members of the executive were involved in risks assessments in relation to (inaudible)?---I think we'd 700 members of the executive, your Honour. It – and I'm not making light of it. There is extreme levels of violence out there. I think they're well shown in the media, you know, all the time. You know, our officers, our members out there do an amazing job. With – this inquest is around one tragedy. I think there's lots and lots of great work we don't have a tragedy, and I think that's a very good thing. And I'm not trying to down play this, your Honour, but I think that's a reflection of the training that is out there, and the commitment that is currently going on by the work force.

You've been asked by our learned friend, Ms Ozolins, about female members of senior ranks in the police force. Dr Beer I think was an Assistant Commissioner, and at the time, as we've heard, Acting Deputy Commissioner?---That's correct.

Have – have Commanders Burns, Read and Tomkin, acted in recent times as Assistant Commissioners?---All – all have, yes, your Honour.

And are there three of the eight Commanders, currently female – three of those are female?---Correct, your Honour.

Is there a wish to – to elevate where merits permit, more members – more female members to the higher ranks of the force?---I think your Honour, you will see we have some outstanding senior female leadership in the Northern Territory Police Force, and I've got no doubt, into the future, you will see many more.

Is that a personal commitment of your own?---And an observation as well, yes, your Honour. I've seen many I think, as we progress.

I'd like to turn, as the last topic, to issues relating to supporting members. First of all, would you mind turning to par 439 of the third affidavit. This is a matter that her Honour raised with you. What is the role of the Employee Assistance Program in providing some logical assistance to members?---As you said – indicate, so your Honour, the Employee Assistance Program, it provides general counselling services, pathway. It is available to employees, and their immediately – immediate family, or dependants. And we will pay up for six counselling sessions. Employees can self-refer or contact well-being services team for assisted referrals. And I'm pretty confident, your Honour, that if additional sick services were required, we would try and accommodate that.

And were someone such as Mr Rolfe, to seek that, would it be made available? ---Absolutely, your Honour.

Now what hasn't taken place is a debriefing. And debriefings take place after critical incidents, wherever that is possible, is that right?---Yes.

What was the difficulty in holding a debriefing, prior to a criminal trial, or even prior to the coronial inquest before her Honour?---I think, your Honour, there was some really clear intent that we do nothing that would impede a fair trial of Constable Rolfe. And I think any debrief, or finger pointing, or trying to allocate improvements, may have an impact later down the track at the criminal trial process. And I - - -

What about the inquest as well?---Again, I think your Honour, the inquest has kicked off very quickly after the conclusion of the criminal trial, so there hasn't – there wasn't a lot of time and I think the reality of it is, at the conclusion of these process, we'll have a greater opportunity to take upon the learnings from this inquest, and greater chance to speak to those intimately involved. At the moment, everyone has been sort of on egg shells, for want of a better word, your Honour, to resolve this matter.

Is there an intention to – to do that which is possible, albeit now some years later, when her Honour's findings are delivered, again, to bring people together, and to assist them to deal with the consequences of the events, and of everything that's transpired since then?---Yes there is, your Honour. I think – and I think that the reality of it is, everybody, and including the senior executive, have been waiting for the opportunity to give the evidence in the right forum, and not to be going out and talking about this matter publically until such time as we could present our evidence before the – and everyone can present their evidence before this inquest.

What efforts have been made to support all members during the coronial inquest? ---I – your Honour, every opportunity we've had, we've had a small team operating for under Superintendent Kenon (?) who sits in the back of the court. We have our chaplains. We've got a welfare team. We've had our health and well-being, we've had psychologists flying down during the course of the inquest. And as witnesses are available, we utilise the rooms at the back there. We provide support. We walk to and from the police station with them, in uniform. Provide them support, so when the camera's, whenever they're in the glare, it's been quite confronting, and we're providing all support we can, as appropriate, for everybody. We've offered that for everybody.

Thank you for answering so many questions Deputy Commissioner.

THE CORONER: Deputy Commissioner, it has been a very long but hopefully helpful and enlightening week for everyone who is participating in the inquest, and for everyone who is following the inquest, and we do appreciate the time that you have devoted. Not only to being part of the inquest, and following the proceedings, but it's clearly gone into you and your team, you're preparing the very detailed documents, and commencing all the review processes that have already undertaken – that you've already undertaken. And we appreciate that. Thank you for coming to give your evidence?---Thank you, your Honour.

WITNESS WITHDREW

THE CORONER: I note the time. We have Officer Porter here. Do we wish to take a short adjournment, do we wish to continue with further evidence today, or do we think we can complete it next week?

DR DWYER: On Monday, your Honour, we have - - -

THE CORONER: And you're free to step out.

DEPUTY COMMISSIONER: Thank you, your Honour.

DR DWYER: Monday we have the – we have Ms Liddle, the Director of the Aboriginal Justice Unit, and Emeritus Professor Judy McCulloch. I think that Professor is only estimated to be an hour maximum. It's difficult – well I think that Ms Liddle, and Ms McCulloch are likely to take the bulk of the day then.

THE CORONER: Then we're going to have – we're going to have a ten-minute break, and we're going to continue with the last 30 minutes of today

Just one thing I wish to raise. We haven't spoken about it for quite some time in the inquest, the text messages have come up again this week. In relation to the text messages all of them are available on the brief-of-evidence.

MS DWYER: They are, your Honour, yes.

THE CORONER: And if any party wishes for additional text messages to be included in those that have been discussed in the inquest to provide context or clarity that invitation has been available to all parties to identify relevant text messages and bring them to our attention.

MS DWYER: Yes, it has, your Honour.

THE CORONER: And that's been available since last year.

MS DWYER: Yes, and I think in fact – absolutely. And in fact, parties were asked to do that by the end of October last year. And a number of parties got back to us.

So I don't suggest that is closed off but if – could I ask then – could I renew that invitation, perhaps, your Honour, if there's anybody who wants to over the weekend let us know if there's any additional text messages that should be (inaudible).

MR OFFICER: Could I just place a matter on that, your Honour. I have viewed I think MFI C for some time but I just want to be (inaudible) judiciary proceedings to some disciplinary matters which involve text messages. I might have questions (inaudible) whether or not it was lawful for Northern Territory police have obtained. I'm not sure whether it's intended that some of those are going to be canvassed or not and whether or not - - -

THE CORONER: The only ones that we've identified, or that any of the parties have identified as specifically relevant to these proceedings are the ones that have been discussed in these proceedings. It's a question of whether or not there are others that - - -

MR OFFICER: (Inaudible).

THE CORONER: So if - - -

MR OFFICER: I don't think have been (inaudible).

THE CORONER: Well, we – not all of the text messages – all the text messages are available to the parties and the invitation has been standing since they became available for any parties to identify messages that might be relevant to these proceedings so that they can be considered for inclusion in a much more succinct

document which is manageable, rather than trying to trawl through the very, very large and unmanageable document which contains all of the text messages.

But we'll adjourn and as I said, for ten minutes, and then we'll come back.

ADJOURNED

RESUMED

BRUCE PORTER:

XN BY DR FRECKELTON:

THE CORONER: Yes, thanks for coming back in the witness box, Assistant Commissioner.

Dr Freckelton?

DR FRECKELTON: Thank you, your Honour. Two things. In terms of the two tables which were exhibited, it might useful, your Honour, just for the present for those to be marked for identification, and then substantively tendered at an appropriate time. Then they along with the statements can be made fully available accordingly.

THE CORONER: Sure, thank you. Well I'm happy for them to be given an exhibit number now. I think they did get one, didn't they?

DR DWYER: They did get an exhibit number. I think the difficulty is that the media would I think like them, your Honour. I mean I'd ordinarily put them onto the website. I think there are some concerns about that, not that they would eventually be released. So perhaps if Dr Freckelton - - -

THE CORONER: So you'd prefer them not to be an exhibit and be marked at this stage?

DR FRECKELTON: Well that's right. The main issue, your Honour, is we've got no issue at all with their being made available to the media. But they probably ought to be made available with the statements rather than on their own, because they're a bit decontextualised otherwise.

THE CORONER: Right, okay.

DR FRECKELTON: Sorry if I'm being too difficult (inaudible).

THE CORONER: No, that's all right. Well I don't know that every exhibit is being immediately made available, has it?

DR DWYER: If your Honour is content to hold off, we can do that. I don't want to cause some sort of administrative hurdle, your Honour.

THE CORONER: Sure.

DR DWYER: I'll address it with my learned friend.

THE CORONER: I'll deal with it later. It is an exhibit, but it won't immediately go onto the website, and we'll sort out when we will make it available.

DR FRECKELTON: Thank you, your Honour, and can I just ask. We're content for our part for the Porter and Smalpage affidavit material to be released to the media as soon as that can be done - - -

I'd just like to clean up an error, but I gather it's been identified. Assistant Commissioner, in the section of this document on page 3 in relation to Master TG, has it been identified by you that there's an error in the fourth column, which would be complaint 10. The date of (inaudible) should be 10 September rather than 14 September?---That is correct.

Now, just while we're all thinking about issues which have been raised in the course of evidence given by Deputy Commissioner Smalpage, with your oversight on people matters are you aware of ongoing contact that has taken place between senior members of the police force, and others, with Constable Rolfe in relation to his wellbeing?---Yes, I am.

Without going into details can you identify to your Honour what has taking place? ---So Constable Rolfe, since – well, recent times – was assigned to Acting Commander John Atkin where he was – where John Atkin had responsibility also for his return to work, or management of his return to work plan. Constable Rolfe was informed that Acting Commander John Atkin was his executive senior contact and even up until recently I've spoken with John. John spoke with Constable Rolfe on 23, 24, and I think it was 26 January. And his last contact was on 6 February. And there has been ongoing contact from the director, from the HR, wellbeing, and the health recovery unit.

And have various professional persons provided counselling and support as well to Mr Rolfe in recent times?---Yes – sorry, yes, your Honour. Our senior psychologist, Ms Chantelle Barker, she has Zach's direct number and regularly attempts to contact him.

All right, thank you very much. And is there chaplain support as well available for Constable Rolfe whenever he wishes it?---There is. And my understanding is that he has actually been in regular contact with chaplain here in Alice Springs, because some of the correspondence that I have had with him is he indicated that he had been speaking with the chaplain here in Alice Springs.

Can we go back to various complaints then, please? And may I take you to the one involving Chris Walker on 20 Feb which relates to an incident on 22 June 2019. This is the one, your Honour, where the – there was – there was a person in the bathroom who made – who expressed very serious concerns about her safety and that resulted in a number of armed police coming into the house to deal with the situation. And Mr Rolfe pointed a gun at the person understood to be the offender. Now, was there a professional command, professional services command investigation into whether this was – this constituted excessive or inappropriate use of force?---We didn't do an investigation, per se, but we did a review of that matter.

Thank you. And that was identified as a result of material that was communicated on Mr Rolfe's phone to others, is that right?---That is correct.

All right, what is the view that you found and that the PSC found in relation to whether inappropriate conduct took place?---Yes, so first of all I'd like to say that this matter was not assessed or – by Senior Sergeant Barram as being excessive or inappropriate.

Yes?---On our review, taking into account all the circumstances surrounding that incident and the information that was provided to the members at the time, where all members entered that property either carrying or drawing a firearm, or a taser, was appropriate in the circumstances.

And did you set out your views about that at par 50 and following of your second affidavit?---Yes, I do.

Let's go straight to the uncomfortable part of this, it is that her Honour has seen on video a still and the live footage from Constable Rolfe's camera of him standing over the individual pointing his weapon at him. What do you say about that in the circumstances, that's aroused concern on the person who haven't seen it?---So our assessment of the circumstances is it was not inappropriate because they'd gone into a dynamic and volatile situation where they have information of that person in that residence being armed with a knife. You have a person who has locked himself in a toilet says – a guy's in police communications that he has locked himself in the toilet and there is an armed offender in his residence. So when clearing that house, even though Mr Walker at the time had his hands up, he was pushed down. At that point in time there is still now known information of anyone else in that house and so the report was, "Someone has a knife" so Constable Rolfe, when he dealt with Mr Walker, he then continued on clearing the rest of the house, as did other members. And we did not find that inappropriate in the circumstances because of the threat that was posed to them through communications.

Thank you. And on this occasion Constable Rolfe, to his credit, had activated his body work video?---That is correct.

Let's move to Antonio Woods. This is an incident on 28 June 2019. And this arose from an allegation and a complaint from NAAJA on 15 January 2020, that Mr Woods tripped and fell and Mr Rolfe kicked him – or someone kicked him – some six times to the head when he was lying face down on the ground. Is that right?---Yes, that is correct.

Now, PSC undertook an investigation into that and directed interviews, is that right? ---Yes, that's correct.

And here what was the evaluation of Professional Services Command?---Again, this was one that was difficult as in there wasn't full body worn video of the incident. Body-worn video was turned on by a second member basically after Mr Woods was on the ground. However, taking into account the evidence of the police officers

involved and the body worn that we did have, and taking also into account evidence at the watchhouse where his custody, or health assessment – and during that health assessment there was also a custody nurse on duty. There was no medical evidence or sign of injury of any sort that would indicate that a person had been kicked in the head six times, which you would anticipate would occur with a person wearing boots, and being kicked. And so there was no evidence to support or sustain that allegation.

Nonetheless, was remedial advice provided to Mr Rolfe on 26 July 2022 about the non-activation of his body worn video?---Yes, there was.

And also to Mr Hansen for the same issue?---Yes, that's correct.

And remedial advice was given about collateral matters to Mr Kirkby, Sergeant Kirkby?---That is correct.

You've given account of this in, amongst other places, par 36 and 41 of your second affidavit, is that right?---I – yes, that's correct in relation to the immediate advice.

But in relation to the substantive matter at par 164 and the following of your first affidavit?---Yes, that's correct. So 164 to 169.

I'll take you now to an incident on 24 September 2019. It's described as the Todd Tavern incident where Mr Rolfe and Mr Kirstenfeldt questioned a man and a telephone was held up beside the man in an effort to identify him, in a similar way to what took place subsequently at House 511. Do you recall this?---Yes.

What occurred was that the man decamped and he was chased some distance, somewhere between 250 and 400 metres, into the mall and was apprehended, and was taken to hospital for shortness of breath and chest pain. This was identified by Senior Sergeant Barram as an instance of excessive use of force with his forming the view that the man had a time where he was pushed into the metal barrier, was giving up, and force was not necessary and he could have been directed to simply and lay down, or similar, while he was hand cuffed. Is that generally the situation? ---Yeah, yeah generally that's the situation, yes.

Have you viewed this – this video multiple occasions?---Yes I have.

Do you – do you have a slight difference of approach from Senior Sergeant Barram, and if so, could you explain why please?---I have a different assessment, or approach from Senior Sergeant Barram. And I did discuss this at length with PSC investigators. Of course we closely examined that footage. (Inaudible) Sergeant Barram, in his assessment, has made – he's made an assessment that the gentleman was giving up, and that he – of course he had run out of breath. There is no evidence that we could find that would support that assertion. There's nothing on body-worn video to say that he's given up or running out of breath, yes, he stopped. But there's a barrier right in front, and he was turning - - -

Yes?---But there was no indication that he was giving up or that he'd run out of breath. And in that situation, we did have, you know, a person who was believed to be an offender, running away from police. You have a (inaudible) who's running at full speed, chasing that offender. And when the person stopped, to turn, when you go frame by frame, it is only a split second reaction time for Constable Rolfe to change direction that he's going, and he pushed – pushed that gentleman. So in those circumstances, we could not, in our mind, full ascertain, or determine that that is unnecessary, inappropriate – or reasonable, or unreasonable application of force.

None the less, was it decided to give a remedial advice to Constable Rolfe about how he should go about identifying and communicating with an offender, and the need to minimise force, and the relevance of (inaudible) defensive training?---Yes he was, because it was highlighting on the – obviously the 10 Operational Safety Principles - - -

Yes?---And the Tactical Options Model, when you got to take safety first, risk assessment, take charge, excuse me, I've got a bit of phlegm in my throat, your Honour.

THE CORONER: That's okay, you've got some water there as well.

DR FRECKLETON: Do you need some water?---No I've got water, it just – just something there.

It'll be better on Monday?---Yeah, but it's also about you know, avoiding confrontation.

Yes?---Minimum force, avoiding force. But the fact of the matter is, when it comes to the 10 – the Tactical Options Model, it is about your assessment and re-assessment, officer presence, safety, as in distance. So by Mr Rolfe putting the phone beside this gentleman's face - - -

Yes?---He has taken away his ability to assess the situation. He's put himself in close proximity. He can't see what's happening with the hands of that person, or what that person intends to do. Didn't follow any of the aspects of the officer safety.

Yes, and keeping a safe distance in circumstances where there was always the potential for conflict?---That – that is correct. And by also putting himself that close, by a person, he could not see the pre-indicators of a person, and the person obviously took off, so he had no ability to have a reaction time to deal with that situation. And so he chased the person. But then also, the situation is when you do go to do use of force, we all have a duty of care, to the people that we're taking into custody, and with those obstacles around where the use of force was applied, those things need to be taken into consideration when you are taking a person, in this case, of course we do have a duty of care for the safety of those people.

Thank you. And you give your account of most of that, at par 82, and following your first affidavit?---Yes. Yes.

I'm going to go now, but very briefly, to the matter of Albert Bailey, which is an incident that occurred on 12 October 2019. This is a matter that it's not finalised and it's the – the matter where I think – five or six members, run across the lawn, after an incident takes place between a man and a woman. And the outcome of it is that Mr Bailey has a significant injury to his head requiring stitches?---Yes, that's correct.

Now, this was – was identified as an issue in – on 28 January 2020. Why was it then that it was identified?---It was identified by the officer in charge of the Alice Springs Prosecution Section. When upon reviewing the body-worn video that was attached to prosecution file, in relation to a s 41 domestic violence application.

So that officer identified that there's an issue, and referred it to the Professional Standards Command?---That is correct.

All right. And in due course, Mr Barram has reviewed it, and reached certain opinions, and opinions, and PSC has reviewed it and reached certain conclusions? ---Yes, that is correct, when Mr Barram identified it, it was already in investigation by the Professional Standards Command. It also came in as a complaint against police a little bit later.

Yes?---But that investigation is still active, and it's a live matter with Mr Rolfe.

Thank you?---Or Constable Rolfe.

In those circumstances, your Honour, I do not propose to ask any further questions in relation to it. But that's something I've discussed with (inaudible).

Now the – I then move to the Yuendumu matter on 9 November. In this regard, Mr Rolfe has been advised that upon his return to work, he will receive remedial advice about a range of matters. Could you identify to her Honour what he will receive that remedial advice about. Then I'll ask you why other options were not available?---Yeah there's quite a number of things.

Just – just summarise them for your Honour, if you don't mind?---So the remedial advice is in relation to Operational Safety Principles.

THE CORONER: Have you got this document there? The summary?---Yes I do.

You're allowed to refer to it?---Thank you, your Honour. So - - -

DR FRECKLETON: So the Operational Safety Procedures?---Yeah so the 10 Operational Safety Principles, which again involves similar things as in the Todd Tavern. Also when we talk about the 10 Operational Safety Principles, it's about take charge, make sure you give an appropriate briefing. Then there's the requirement for a reminder for him to wear a vest. He was not wearing his enhanced load bearing vest, as were none of the members that attended. There were issues with the placement of his Taser. So he didn't have a proper for his holster for his

Taser. He made up his own avenue for carrying a Taser. There's also some reminders around the assessment re-use of force. He was also wearing a non-approved uniform item, which was an undergarment, not approved vest. Remedial advice will be given – or is given in relation to the powers of entry. We're not saying that the unlawful entry was unlawful, but he used consent, our assessment he used consent to enter the properties.

Is this 577 or 511?---Both.

Both?---Yeah. Primarily 577, he's using consent. Whereas, as per s 126 Police Administration Act – sorry, 126 *Police Administration Act*, is you need to form reasonable grounds before entering property. So it's to remind him of how you come to form those reasonable grounds. There's also, in relation to not separating as a witness, on return back to Alice Springs, because of a serious incident. There's also there's some remedial advice in relation to the (inaudible) or CPR can never pronounce it.

I want to be clear about this?---Yep.

What was the issue in terms of the resuscitation?---So there is not issues - - -

Before you go – sorry?---Sorry.

Because Constable Rolfe was engaged in significant, and energetic efforts in an attempt to resuscitate Kumanjayi at the scene, and then over quite a period of time at the station, wasn't he?---Yes, and - - -

What's the – what's the (inaudible)?---And that is fully acknowledged.

What's the issue (inaudible)?---So it's the issue with the other members present there was that it – the cessation of CPR wasn't in line with the current training. So as in the only way you stop CPR in the current training – there's four aspects. Primarily, the person's recovered, you can't continue because of exhaustion, or a – qualified medical help arrive, or the person's been announced deceased by a qualified doctor or a qualified paramedic. So - - -

Now, we need to be very careful about this, Assistant Commissioner, because it's important that none of the community or the general public through the media misunderstand this. Was there any suggestion that CPR was ceased before it was clinically sensible to do so?---No, there is no indication of that. The only aspect of this one is they ceased because there was phone conversations with – on 000 – re qualified people prior and there was an undertaking that if we were going to cease CPR just recontact them to talk about it.

Yes?---And - - -

That didn't occur?---That did not occur.

But is there any suggestion that if it had been continued for a number of extra minutes it would have made any difference to Kumanjayi's survival?---No, it wouldn't have made any difference, and I think that's been fairly established through evidence given during the inquest and the trial.

Now, remedial advice was given to Mr Hawkings - - -?---Sorry, there is also one other thing.

Sorry, there's something in relation to (inaudible)?---Yes, in terms of breach of the restricted duties policies Mr Rolfe was carrying an injury to his thumb and he provided information that he'd already had his (inaudible) holster because of the concerns he had with his thumb.

When he went into House 511?---Yes, that's correct.

So he had the holster unclipped because there was an issue with his right thumb? ---So he should have reported to his supervisor that he had an injury that could, or may or may not effect his operational duties. And he did not make that report.

Thank you. Remedial advice was also given to Mr Hawkings in relation to some similar matters that you itemised on page 8, is that right?---Yes, that's correct.

Also to Sergeant Frost in relation to operational safety principles, in relation to command and control, in relation to briefing delivery, and also issues in relation to CPR?---That is correct.

And again, is that related to the same CPR issue?---Yes, the exact same issue.

And what's the situation with Mr Kirstenfeldt?---Mr Kirstenfeldt, he did get remedial advice on 22 February – sorry – yes, sorry, on 22 February. Just recently.

In relation to similar matters?---Yes, similar matters.

And likewise (inaudible)?---That is correct.

Now, some of these are serious matters. Some of them are less serious. What options were there in terms of any disciplinary proceedings arising from the trial?--- Options were fully available to professional standards to undertake action under part 4 if it was deemed to meet those thresholds, because there was a statute extension approved by Judge Morris that – which is expiration date of 3 April 2023. But going through the assessment of the whole incident there was not any, what we considered as serious breaches of discipline but there are matters that were to be brought to their attention that they could learn from.

Thank you.

Your Honour, could I just finish this section (inaudible)?

THE CORONER: Yes, please.

DR FRECKELTON: Thank you.

I'd like to move on to the next issue involving Mr Rolfe which was the failure to disclose some matters at the recruitment stage. Did PSC undertake an investigation to evaluate whether Mr Rolfe in a criminal sense obtained the financial advantage of employment by deliberately making a false representation in the documentation he provided in applying for employment with the Northern Territory Police Force?---Yes, the Professional Standards Command took an investigation.

And did the investigation conclude on 2 July 2020?---Yes, it did.

And was the decision made that it's inappropriate to bring charges?---Yes, it was.

Was disciplinary options available?---No, no disciplinary options available because at the time of the commission of that conduct Constable Rolfe was a not a member of the police force and not subject to part 4.

Now, there are various matters in respect of the text messages which remain live and where disciplinary action has been taken, and a hearing has been conducted by a senior member of the force, is that right?---Sorry, say that again. Sorry.

A hearing has been - - -?---(Inaudible).

(Inaudible). A hearing has been conducted by a senior member of the force, a commander and at times an acting assistant commissioner, in relation to matters arising from the telephone messages that have been the subject of much discussion before your Honour?---Yes, that is correct.

But has an action for judicial review in respect of the lawfulness of that material been taken in the Supreme Court?---Yes, and it's current matter live.

Do you understand that that matter is going to be heard in early May this year?
---That's my understanding, yes.

And if permitted will the hearing proceed after that – after the ruling from the judge?
---That is correct.

Mr Rolfe wrote – gave an interview to the Spotlight Program and participated in interviews with the Australian, and this came to light at the time in March and May 2022, is that so?---Yes, that's correct.

A PSC investigation took place straightaway?---Yes, I did once, when it was notified to us, yes. Or we identified it, yes, sorry.

And did Constable Rolfe admit breaches of discipline in respect of his conduct?
---Yes, he did.

Do you explain that at par 176 and following of your first affidavit?---(Inaudible). Yes, that's correct.

Now, you explained to her Honour at the recommencement of this hearing that Constable Rolfe was given a direction on 13 May of last year not to do anything that contravenes media policy, the personal use of social media instruction, and the code of conduct and ethics general order, is that right?---That is correct, yes.

Who gave him that direction?---Acting Commander Kylie Anderson of Professional Standards Command.

And was he also given a Notice of Termination on 6 July to be a on good behaviour for 12 months and given a written caution?---A formal written caution, yes, that's correct.

We don't need to go into further details now but is it correct that he has been called upon to answer why he as – notwithstanding those matters to which we have just referred – cause to be published a 2,500 word essay a few days ago?---Yes, that's correct. And that is a live matter that he has still time to provide a response.

Yes. And he was given seven days to do that last Sunday?---That is correct.

All right.

THE CORONER: Yes, sorry.

DR FRECKELTON: I've gone quiet, your Honour, because there are a number of other topics to canvas with the Assistant Commissioner. But this might be a convenient time to (inaudible).

THE CORONER: Nobody wants to sit on, on a Friday afternoon until the wee hours. I'll take the invitation to adjourn to Monday morning at 9:30.

ADJOURNED