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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 25 OCTOBER 2022

(Continued from 24/10/2022)

Transcribed by:
EPIQ

THE CORONER: Mr Robson.

MR ROBSON SC: Yes, your Honour, I flagged through counsel assisting a matter I wish to raise this morning in relation to what I anticipate to be the remainder of Sergeant Kirkby's evidence. Yesterday we had some examination on matters relating to the use or misuse of body-worn video cameras. And a number of matters were put to Mr Kirkby in terms of general issues of mala fides in the use of the cameras, and indeed your Honour put - - -

THE CORONER: Sorry, Mr Robson I'm just (inaudible).

MR ROBSON: Certainly.

THE CORONER: Sorry, sorry to interrupt you.

MR ROBSON: That's all right, your Honour.

THE CORONER: Thought I had - - -

MR ROBSON: Your Honour also put some matters to Sergeant Kirkby yesterday towards the end of the day, in relation to the allegations that have been put to him concerning officers acting up on body-worn video, and attempting to falsify the evidence and so on. It didn't occur to me at the time, but it certainly did overnight. It's not a matter that s 38 would cover, in terms of the privilege against self-incrimination. Because s 38 of the *Coroner's Act*, deals with certificates that can be granted by your Honour to protect a witness from consequences in civil or criminal proceedings, or proceedings otherwise of a judicial nature.

Sub-section 3. And it's not a matter of the privilege of self-incrimination at all. It goes to the issue of penalty privilege, in terms of Sergeant Kirkby and officers in a similar position being exposed to potential disciplinary action under the *Police Administration Act*. And that also goes for the anticipating examination in relation to the so-called racist text messages. And I anticipate counsel assisting will be seeking to extract from Sergeant Kirkby and other witnesses, concessions their language is racist and unbecoming of a police officer. And having a tendency to bring the police force into disrepute. Matters of that kind.

Although I recall that counsel assisting at the outset of this inquest indicated that the purpose (inaudible) demonise individual police (inaudible) a number of adjectives that were used to describe, what appeared to be already accepted as racist text messages. They've been referred to as filthy and disgusting, and things of that kind. Disgraceful, thank you. So the line that counsel assisting obviously appears intending to share in relation to Sergeant Kirkby, and other officers in this area of body-worn video footage, and so-called racist text messages, is to expose them, and to put suggestions to them, that they are racist.

They've seen, or observed, or engaged in mala fides in the use of body-worn video footage, matters of that kind. Those allegations put to witnesses in

examination would expose the potential to breach of discipline proceeding under s 76 of the *Police Administration Act*. Section 76 of the *Police Administration Act* defines breach of discipline, amongst other things, as engaging in disgraceful or improper conduct, either on or off duty. And clearly the text messages which occurred (inaudible) in some or all cases in an off-duty situation would be captured by that. As it would of course the alleged improper conduct in relation to the use, misuse or the non-use of body-worn video footage.

And third – and in par C, the definition also includes a contravention or failing to comply with the provision of the code of conduct that's the NT Police code of conduct. Which is a very broad document, and encaptures a very broad variety of acts and omissions, which can bring about disciplinary action under part 4 of the *Police Administration Act*. It's not to the point that these messages may have occurred years ago. Or that the issues in relation to, certainly the use of forces incidents have already been investigated.

What is to the point is that counsel assisting is here and now within this inquest, seeking to adduce or discover evidence which would potentially bring about the disciplinary action under part 4 of the *Police Administration Act*. And the *Police Administration Act* procedures have a limitation period of six months. So that is a six-month period if one runs from the point which breach of discipline is discovered, not the time at which the actual conduct or the source findings occurred. So what can – in my submission, can very clearly occur in this situation, when witnesses such as Sergeant Kirkby give their evidence, is that their answers to questions, suggestions that are being put to them, that they've been involved in mala fides in the use of body-worn video footage, that they've engaged in sending then, the exchange of racist text messages, all those kinds of allegations could potentially expose them to proceedings under part 4 of the *Police Administration Act*.

The – as I said, your Honour, it's a bit of – s 38 deals with the privilege against self-incrimination. And in any event, it only provides protection for proceedings which essentially are of a judicial character. Proceedings under part 4 of the *Police Administration Act*, are not proceedings of a judicial character. And in any event, in the very least, s 79 of the *Police Administration Act* provides the Commissioner with the power of dismissal in the public interest, without conducting an investigation, or a procedure.

And on the basis of the evidence that's sought to be adduced or discovered by counsel assisting's examination of Sergeant Kirkby and others, the Commissioner could act on that information conceivably and evoke s 71 of the *Police Administration Act*. The question of 78 and so, the question of public penalty privilege is considered in the decision of *Bell v Deputy Coroner of South Australia* which I've provided through counsel assisting this morning, your Honour. And Blue J in that case, held that the Coroner had erred in finding that the South Australian Coroner had aggregated penalty privilege. And after quite an extensive analysis of the authorities, observed that it's a privilege which is succinct, and a privilege against self-incrimination. And it's a privilege which has been long recognised by common

law and equity. And it's a privilege which can only be abrogated by statute, by express terms of necessary intendment.

The South Australian *Coroner's Act* obviously has its difference to the Northern Territory *Coroner's Act*. But ultimately, your Honour, my submission, and it may be something your Honour's assistant will detail in considered submissions. I'm making this submission this morning after becoming aware of the authority last night. So I certainly haven't perfected my submissions in that regard. But Blue J did make some rather helpful observations and the context of the application (inaudible) privilege under the South Australian *Coroner's Act*.

So my submission is, your Honour, I – it's a matter that your Honour obviously needs to rule on the existence of penalty privilege and the like. Obviously, it's a matter that if it exists, your Honour rules it exists, it's a matter to be raised, not – perhaps not as a blanket objection going forward, although it does seem that this is where we're going with the evidence of Sergeant Kirkby, once we got to that point yesterday afternoon with the body-worn video. He said relating to the text messages relating to the (inaudible) discussions about terms, body-worn video off and that kind of thing.

There are two other incident reports that counsel assisting intends to go into. At least I was informed yesterday. So it appears that we're now on that track, and delving into general issues of mala fides concerning the use of body-worn video, and the so-called racist text messages. I don't know what else counsel assisting intends to cover in Sergeant Kirkby's evidence. That – as I said, your Honour, it's a matter your Honour will need to make a ruling on, the distance of privilege, and depending on that, I might need to seek some instructions from my client as to where we go from there.

Obviously other parties, interested persons, will want to make submissions on the matter. And I don't expect that they'll be ready to do so, at least in a fully considered way, like myself this morning. It might be something your Honour could be prepared to hold in abeyance and allow us a bit of time for submissions to be provided.

DR DWYER: We're ready, your Honour, so that we don't hold up proceedings further. Mr Coleridge will deal with the argument.

MR BOE: We're in a position to make submissions, but we're happy to wait until after counsel assisting, or whenever your Honour wishes to hear from us.

THE CORONER: Would you – sorry, and Mr Boe's happy to go, either before or after?

DR DWYER: I think he'll be assisted by Mr Coleridge, your Honour.

THE CORONER: Okay, and but Mr Suttner?

MR SUTTNER: The question your Honour is whether you'd like to hear me, because the decision relates to my client as well. Or whether you want to wait to have – I'm happy to address you also in a semi-prepared basis. But just to add slightly to what Mr Robson has said, I'm ready to do that.

THE CORONER: Yes, all right.

Yes, Mr Suttner.

MR SUTTNER: Okay. Your Honour, the point of the *Bell* decision to which Mr Robson referred, is that penalty privilege is to be viewed equally, with self-incrimination privilege. And that is a privilege that has long existed, that continues to exist, unless it is specifically legislatively ousted. In South Australia, when *Bell* was argued, s 23 provided for an ouster of self-incrimination privilege by way of the offer of a certificate.

The recipient of the offer of a certificate was obliged to take the certificate. He was obliged to answer the questions. And then if he answered satisfactorily, then the evidence he gave, to which he objected, would be excluded. On that basis, *Bell* came in for the Supreme Court in South Australia. And that is where the decision was made to which Mr Robson's referred, and which I have just explicitly identified what was done.

Interestingly enough, (inaudible) of the *Bell* decision, the South Australian legislature introduced a new section to the South Australia *Coroner's Act*. Section 23A. And what s 23A did, was exactly what had been missing, and what had been identified by Blue J in *Bell*. And that was a certificate revision for penalty privilege to overcome the problem of privilege stifling the proceedings of a Coronial.

Now, in the Northern Territory there is no provision for an amelioration of the penalty privilege privilege. If it is raised and if it is equal to self-incrimination, it incriminates privilege then when it is raised, bona fide, it has to be honoured and the evidence has to be excluded. There isn't provision for a certificate. Now, if the law in South Australia on *Bell* is good then it enables a witness over here to raise a penalty provision and to go from there to have it excluded.

It appears that you, your Honour, with respect, do not have the power, it hasn't been legislated here, accorded you to offer a certificate.

Now, Mr Robson made a point about the counsel assisting the Coroner seeking to extract admissions about the conduct that may be self-incriminatory even by way of penalty privilege. We say it goes a little further than that. Our client doesn't have to admit that he is racist or admit what he has done wrong. If, through him documents are put in, questions are asked from him which enable anybody to draw an inference that, given the answer he gave to the question that was put, it discloses conduct which is worthy of a disciplinary hearing, that would invoke penalty privilege.

So what we have also heard via the interchange between counsel assisting and every witness that has been before you, is putting a series of texts to you and the question and the answer disclosing that they were racist, they were disgraceful, et cetera, et cetera - those are the sorts of terms which invoke the code of conduct and disciplinary proceedings.

Now, two other matters which come into the equation here, one is even when you, your Honour, are dealing with a self-incrimination privilege question, you would have to ask yourself before you offer a certificate, whether the evidence in the wording of the statute is expedient for the purpose of justice. So over here what you have got is a situation and, please believe me, you accused me last week of trying to re-open a decision you made. I am not trying to do that. But I have got to make the point that the argument has been put to you that these texts from months before the Yuendumu incident, aren't strictly relevant to the inquest.

In one of your recent findings you held that it may be that at the end of the Coronial it may turn out that these texts are not relevant. So my submission to you would be that on that basis, even if you were looking at self-incrimination, you would ask yourself, "Is reception of this evidence expedient for the purpose of justice?"

The other point I want to make to you about a recent ruling you made, when you dealt with the question whether an order you had made to keep things confidential should be opened up and you dealt with most of the text messages - you dealt with my client together with certain other witnesses and you dealt with them cumulatively and found the conduct evidence by this to be racist and dishonest.

THE CORONER: Potentially.

MR SUTTNER: Well, in fact your Honour puts the point better than I could have because that is what is required here, is potentially - so potentially is there potential for disciplinary proceedings and that would then invoke the privilege.

Those are my submissions as to why you should exclude the questions. Thank you.

MR COLERIDGE: Your Honour, would you excuse my back? Are there submissions from - - -?

MR EDWARDSON KC: No, no, no, your Honour, I just wanted to correct one aspect of Mr Suttner's submissions. I think he put - I may have misunderstood him, that before s 23A was invoked as a consequence of the *Bell* decision, there existed a certificate process under the Coroners' Act of South Australia for self-incrimination. In truth, South Australia has the only legislation in the country that had no certificate provision at all. So what the position was at the time of the Coronial inquest in *Bell* was objections were raised throughout under the guise of both self-incrimination on the one hand and secondly, on a basis of a penalty privilege, that was overruled by the Coroner at first instance, as set out in the decision of Blue J in *Bell*.

Parliament then invoked s 23A which provides for a certificate both in the context of self-incrimination with the conduct and also in the context of penalty privilege and so it covered both matters, but the significance of that legislative change in the context of the *Morrison* case, was it was not retrospective, which meant that the Coroner could not invoke s 23A for the purposes of that particular primary interest. But the point otherwise, is well made. That is that if Willis J's decision is correct the point that I think has been everybody so far, is that the s 38 under the Northern Territory *Coroner's Act*, whilst providing for a certificate, that certificate can only be issued in the context of self-incrimination, criminal conduct. It has no application or capacity to, as it were, alleviate a person declining to answer questions on the grounds of significant privilege in this act and that can only happen with the parliament's will, self expressed in those terms and theory and other evidence.

MR COLERIDGE: I am grateful for the correction, your Honour, it was one that I was going to clarify with Mr Suttner, so - - -

MR SUTTNER As am I.

MR COLERIDGE: The position as it stood prior to the decision in *Bell* was that 23(5) in fact entrenched the privilege against self incrimination and didn't partially abrogate it for providing for a scheme for the giving of a certificate. Now, we are roaring agreement with Mr Edwardson there but I will take you to some passages of Blue J's judgment in a moment.

THE CORONER: Do I have a hard copy of that or do I need to go on line?

MR COLERIDGE: It's only one paragraph, your Honour, so I will be able to read it to you.

THE CORONER: Okay. I've got it - I've got it.

Mr Robson, do you want to provide - - -?

MR ROBSON: No, I'm sorry, your Honour, I don't have a capacity to provide - - -

MR EDWARDSON: We'll get one of (inaudible).

THE CORONER: All right, I have - - -

MR ROBSON: Direct access.

THE CORONER: I have a copy of it nearby.

MR COLERIDGE: Thank you, your Honour. We were given notice of this objection at 8.47 am this morning. That is not a criticism but it means that I am not able to provide your Honour with a number of authorities and the second reading speech to the bill that inserted s 38 of the *Coroners' Act* into that Act. Ordinarily I would have provided them to your Honour.

The contention this morning appears to be first that the penalty privilege applies to Coronial proceedings and second, that s 38 of the *Coroner's Act* does not abrogate the penalty privilege and in support of that contention you've been taken to a single case, the decision in *Bell*, which considered a different statutory regime. With respect, your Honour, your counsel assisting's position is that the application fails for two reasons. The first is that my friends are simply wrong to assert - and I will quote directly from Mr Suttner that "penalty privilege is to be viewed equally with the privilege against self incrimination."

In my respectful submission there is a relatively significant body of High Court authority and intermediate appellate court authority in this country over the last 10 to 15 years, that has drawn a very significant distinction between the two privileges – unless an Act confers the penalty privilege, it does not apply. And in my respectful submission, the penalty privilege does not apply in Coronial proceedings because they are not proceedings for a penalty. Ultimately, your Honour might not need to engage with that more esoteric argument because in its clear terms, and having regard to the statutory context, it is obvious that s 38 of the *Coroner's Act* abrogates the penalty privilege.

Before I turn to those matters, I do want to acknowledge where there is a concession or at least a point of agreement between your counsel assisting and the objecting parties. We agree that in theory, the penalty privilege can apply in disciplinary proceedings, and we agree that the giving of evidence about misconduct under a code of conduct could potentially expose a person to a penalty in disciplinary proceedings. So there will be no argument to the contrary from us there. Your Honour, I will take you to the first point, if I may, which is that the penalty privilege is not available in Coronial proceedings.

Now, in order to do that, I need to say something about the nature of the privilege against self-incrimination. Mr Edwardson is quite right to say that it is a substantive common law right. It is not a rule of evidence. And that it is a fundamental common law right in the sense that it is protected by the privilege of legality. That means that if it is to be abrogated partially or fully, clear words of necessary intendment are required. In my respectful submission, the position when it comes to the penalty privilege is quite different. First, in my respectful submission, it is not a substantive rule of law. It is an evidentiary doctrine that arose out of the chancery courts – so it is an equitable doctrine, and it applies only in the proceedings in which the penalty is sought.

So contrasting it for a moment with the privilege against self-incrimination, where an accused can, in Coronial proceedings, invoke the privilege against self-incrimination, the party who seeks to invoke the penalty privilege – it appears on the authorities, can only invoke the penalty privilege in the proceedings for the penalty. Now, they might be civil proceedings brought by one of the major regulators, disciplinary proceedings, proceedings brought against police officers, nurses and doctors for this conduct. Now, in my respectful submission, that is made tolerably plain by a series of High Court decisions, beginning with the decision in –

I apologise, your Honour – decision in *Daniels Corporation*, and then later the decision – I will give your Honour the citation – that’s (2002) 213 CLR commencing at 343 at par 31.

And those observations which I should note were made by four judges of the High Court of Australia, were picked up in *Rich v Australian Securities and Investments Commission* [2004] 222 CLR 129 at 24. The point their Honours made was:

“there seems little if any reason that the privilege should be recognised outside judicial proceedings, and certainly no decision of this court says it should be so recognised, much less that it is a substantive rule of law.”

The point for present purposes, your Honour, is that if it is not a substantive rule of law, and if, as we know, s 39 of the *Coroner’s Act* provides that your Honour is not bound by the laws of evidence, why would it apply in Coronial proceedings?

The next case, your Honour, that I think it’s necessary to take you to is the decision in *Migration Agents Registration Authority*. That’s not reported, but the medium neutral citation is [2018] FCAFC 5.

Now, at par 77, the Full Court of Australia – so the Full Court of the Federal Court distinguished the penalty privilege and the privilege against self-incrimination in these terms. They said:

“Following *Sorby*, the starting point for the privilege against self-incrimination is that it exists and applies unless abrogated. However, that is not the starting point for penalty privilege, which is not, following *Daniels* and *Rich* –

The two decisions I just referred your Honour to –

“a substantive rule of law, let alone an important and fundamental common law immunity, having as it does, a very different origin and history. In each setting where penalty privilege is claimed, the opening question is whether that privilege applies in the first place, not whether it has been abrogated. This emphasises the critical importance of considering carefully the statutory provisions in question, as well as the particular proceedings, the relief sought and the particular adverse consequences faced by the person claiming the benefit of penalty privilege.”

Now, these proceedings expose no one to a penalty. No penalty is sought. All that is sought from your Honour is findings. It’s not to the point that a penalty might be claimed against a person in other – in another proceedings, because, not being a substantive common law right, there is no reason to apply the penalty privilege into these proceedings.

So that, your Honour, is to answer, I think it’s best described as an assumption made by my learned friends that the penalty privilege would apply unless and until

abrogated. But even if your Honour's counsel assisting is wrong in that, in my respectful submission, it is tolerably plain from s 38 of the *Coroner's Act* that any penalty privilege would be partially abrogated by the regime for the giving of certificates.

Now, in my respectful submission, there are seven reasons why that must be so. One of those reasons is acknowledged by Blue J in the decision in *Bell*, and I will take you to that passage in just a moment.

The first reason is really to say something about the statutory context. The former Territory Coroner in the Northern Territory, Judge Cavanagh, had lobbied the government for many years, because he perceived Coronial proceedings to be frustrated, time and time again, by objections of precisely this kind. Those concerns, which were conveyed to the legislative assembly of the Northern Territory in writing, were picked up and read onto the parliamentary record when s 38 was inserted into the Act.

The purpose of s 38 was described by the legislative assembly as being "to ensure that the objections of Coronial proceedings were not frustrated by witnesses refusing to answer questions." And the purposes, as identified by the legislative assembly, were those of "finding the truth about all circumstances of the death", and the "making of sensible recommendations in relation to public health or safety or the administration of justice." Now, in my respectful submission, it would be an absurd result if s 38 operated so as to partially abrogate the privilege against self-incriminate, and yet this much more common privilege, and one which is equally likely to frustrate the purposes of the Coronial, was not abrogated.

Now, the second point, your Honour, is that it is clear from the second reading speech to the *Coroner's Act* amendment bill of 2001, that the Attorney General in fact turned his mind to the frustrating effect that the privilege, not the privilege against self-incrimination, but the penalty privilege, might have on the Coronial process. The Attorney General said:

"The Coronial process may also be frustrated where medical practitioners refuse to answer questions on the basis of self-incrimination."

And he went on to note, that:

"The concern for these witnesses may not be that he or she may be charged with a criminal offence, but that civil or disciplinary proceedings may result from the giving of evidence."

And so it is quite clear, in my respectful submission, that the verb "criminate" is not limited to criminal proceedings; but is being used loosely, I would have to accept, by the legislative assembly to describe concerns that a person might expose themselves to a criminal offence, but also concerns that a witness might refuse to answer questions because, "they might expose themselves to civil or disciplinary proceedings."

Third, this is consistent with the comments made by the Northern Territory Law Reform Committee in support of the draft bill, that the policy behind the amendment is to get to the truth. And that as many witnesses are at inquests, are more concerned about civil liability than criminal charges and guilt. And for that reason, the policy was more likely to be fulfilled if the certificate were extended to include any criminal, civil, or other, proceedings.

The fourth point is apparent in my respectful submissions from the text of s 38 itself. Now it was submitted by Mr Robson that s 38(3) can only apply in judicial proceedings. With respect, that is to use the language in a somewhat loose fashion. The provision provides that the evidence given under certificate is not admissible in evidence in criminal or civil proceedings, or in proceedings before a tribunal, or person exercising powers and functions, in a judicial manner.

That does not mean that the proceedings are “judicial”, in the sense that a court needs to be exercising the powers or functions. Indeed, the powers and functions can be exercised by a tribunal or other person. And what the legislative assembly is really saying there, is that there needs to be some obligation, for example, of procedural fairness. Of reasonableness, and rationality.

The fifth point, your Honour, is, and I think it’s one I’ve already made, that it would be an absurd result if s 38 abrogated the privilege against self-incrimination, but did not abrogate the less fundamental, that arguably easier to invoke penalty privilege.

The sixth point is that precisely this point was made by the High Court in *Daniels Corporation v The Australian Consumer and Competition Commission*. Now that case concerns s 155 of the *Trade Practices Act*. And it was suggested that because the Act in terms, abrogated the privilege against self-incrimination, it did not abrogate the penalty privilege. Now the High Court said, “The implication that the privilege against exposure to penalties was abrogated by the section, can be supported by reference to the absurdity that would result if the privilege could be claimed, and pursuant to another section, the privilege against self-incrimination, could not.”

Now, I’ve noted, your Honour, that we see the decision in *Bell v Deputy Coroner* as in fact supporting your counsel assisting team. And that is because precisely the same point was made by Blue J at par 168 of the judgment. Now the concession has been made, that at the time of this decision, there was no certificate regime what so ever. But Blue J turned his mind to what the position would have been, had there been a certificate regime for the privilege against self-incrimination. And his Honour said:

“If s 23 had abrogated self-incrimination provision, legal professional privilege, an argument would be available that it was implicit that penalty and forfeiture privilege were also abrogated.”

So in my respectful submission, not only is the decision in *Bell* distinguishable. It was distinguished from this case by Blue J, on whose reasons, our friends rely. We've got a copy of the decision for your Honour.

THE CORONER: Thank you.

MR COLERIDGE: So ultimately, in my respectful submission, first it is far from plain that the penalty privilege would apply in these proceedings. Because they are not proceedings for a penalty. And second, to the extent that it does, the penalty privilege is clearly abrogated by s 38 of the Act.

THE CORONER: Mr Boe.

MR BOE: Your Honour, may I hand up a copy of the second reading speech. It's being circulated to the parties now. The current debate really does turn on how your Honour interprets the phrase, "Before a tribunal, a person exercising the powers and functions in a judicial manner." And with respect we adopt Mr Coleridge's submissions, as to the word "manner", as against the submission made by Mr Robson as to "proceeding".

But the important part of the second reading speech, is the last sentence of the second paragraph, where it was said, "The objective of the Coronial inquest is to find the truth about all the circumstances of a death." And there's reference to the issue of frustration. Within the penultimate paragraph on the first page, it is said,

"It is important to emphasise that the effect of the amendment is not to provide an indemnity of prosecution protection against civil action, or disciplinary action. The witness could still be charged with a criminal offence following the inquest, or the investigations taken with regard to civil or disciplinary action, it is just that the actual evidence given to the Coroner cannot be used in subsequent proceedings."

Now, in our respectful submission, if there any doubt about counsel assisting's submission, as to the word "judicial manner", your Honour should resolve it by reference to what the second reading speech foreshadowed as to the purpose of that provision. Bearing in mind, and again, accepting that the – the provision must be read in line with s 41. Your Honour may order a witness to give evidence, subject to s 38. The – the course your Honour should take is permit any question to be asked. If the witness perceives, or it appears to your Honour, that the answer may criminate, or tend to incriminate that person, your Honour may offer a certificate.

The section doesn't require the witness to take that offer, even if your Honour offers the certificate. And thereafter, s 41 permits your Honour to require the witness to give evidence. So in a sense, those arguing against the position we take, with respect, can't have it both ways. That is, if the *Coroner's Act* is read as not abrogating the right to claim penalty privilege, then s 38 should be read, as extending to penalty privilege, not just self-incrimination privilege. It's hard to see

why parliament would provide a certificate for self-incrimination privilege, but not penalty privilege.

The alternative view, and if Mr Robson's right, that the Act does abrogate the right to claim penalty privilege, because of s 41(1)(c), it empowers the Coroner – your Honour - to order a witness to give evidence on oath, subject to the offering of a certificate under s 38. So far, these very questions, which Mr Robson is taking issue, have been asked. The witness has given answers. He hasn't yet sought to refuse to answer a question, although a discerning ear as to what he was saying suggested that he was concerned about answering questions, when he adopted the line as (inaudible) any details of that incident.

That was the time, if the witness chose to, or his counsel wished to, suggest that your Honour consider offering a certificate. It seems that's what's being sought to be done now. And in my respectful submission, when a question is asked, your Honour should offer the certificate, and from there we proceed to achieve the very purposes of this inquiry, which is to get to the truth of what happened, bearing in mind the focus of certainly my questions will be, no so much of pricking or creating issues for this witness in terms of his memory, but rather look at what we need to know about Constable Rolfe's behaviour and conduct.

THE CORONER: Mr Mullins.

MR MULLINS: Three points, your Honour, briefly. The first is that the Brown family support the submissions of Mr Boe, and counsel assisting. Secondly, we have – we will circulate an article by Lachlan Blake and Brandon Le, spelt B-R-A-N-D-O-N, Le, L-E. For want of an effective *Coroner's Act*, *Bell v Deputy Coroner, South Australia*, [2020] SASC 59. And that's published in the Adelaide Law Review. And at page 387, the difficulties associated with the decision in *Bell* are set out by way of summary for your Honour.

Thirdly, if one needs any further support for the proposition that judicial manner will extend to disciplinary proceedings in this case, s 84B *Police Administration Act* suggests that a – a hearing for a disciplinary proceeding will be conducted in a manner where the – for example, person who is being disciplined is entitled to legal representation and so on. I can't assist your Honour any further.

MR EDWARDSON: Sorry, can I just say one more thing (inaudible) court, and in particular, regarding submissions put by counsel assisting. And in particular, par 168 of the judgment of Blue J. That is, the point that's made where Blue J said this, in s 23 – because that's as it then stood – had abrogated self-incrimination privilege, and indeed, professional privilege, an argument would be available that is implicit that penalty and forfeiture privilege were also abrogated. However, the non-abrogation of self-incrimination and legal professional privilege does not, of its intention, to abrogate other privileges.

The point that his Honour made, and has equal application to this legislation, in this Territory, is that parliament has not abrogated, of course, the legal professional

privilege. Now, plainly anybody could make a claim, a valid claim of legal professional privilege in the Coroner's Court, and it would not be required to answer and that would have to be the subject of an express application. The point that's being made by Blue J is that there are a whole host of privileges, and I think he even says, that you couldn't possibly imagine how many there are.

But the point that was made, and the ultimate decision was that if parliament does intend to abrogate privilege, in this case, the privilege that has been argued today, it must do so expressly or by necessary intendment. That hasn't been done in the context of this case. Secondly, the High Court cases and the tensions that exist between them are in fact dealt with by Blue J on a proper careful analysis of the judgment, which I accept is lengthy, and he does go into it in some detail.

Finally, insofar as my learned friends seek to rely on second reading speeches and the like, the last time I looked at statutory construction, and particularly in the context of no ambiguity, if one looks at the legislation itself, and looks at the words of the relevant statute and determines by reference to those words what parliament intended, and what in fact has been achieved by the legislation, what politicians might have said in the context of why in particular that piece of legislation was put forward on that basis.

And, finally, I'm not familiar with the, no doubt, academic article that my learned friend Mr Mullins has referred in South Australia, but I'm not aware, and certainly I can have a look, but I'm not aware of any decision per se that has dealt with or criticised what Blue J said about his analysis of the decision in the *Coroner's Act* as it then existed in South Australia. And, finally, your Honour, much like the arguments that have been advanced against us in par 194, the Coroner, at first instance, in the *Bell* matter advances the reasons for the constructions she adopted of the Act, that if penalty privilege were available, the work of the court would grind to a halt.

His Honour dealt with that specifically by saying there's no basis of such an assessment (inaudible) to Parliament that (inaudible) made such an assessment, and so on. And your Honour can see that analysis of that particular paragraph. And, finally, your Honour, for the record, bearing in mind that Sergeant Rolfe (sic) will – sorry, Constable Rolfe will ultimately be called upon to give evidence, the same issue is likely to arise, (inaudible) so I will just (inaudible) behalf in relation to the issues that have been (inaudible).

MS OZOLINS: Your Honour, I haven't weighed in earlier. Can I just note, though, the police association does support the application made by Mr Robson, noting that your Honour's ruling will obviously have an effect on a number of police witnesses who have given and who will give evidence in this matter. In addition to the matters that have already been raised, I would just like to note that as your Honour is no doubt aware, there are a range of disciplinary proceedings that are catered for under the *Police Administration Act*, not all of which are dealt with by way of hearing, and I note Mr Mullins specifically referred to disciplinary hearings being dealt with in a quasi-judicial manner. That, of course, doesn't apply to disciplinary proceedings which result in a person taking action, for example, separate from part 4, or in

circumstances where there's various sanctions imposed where there is no hearing. I simply make that point, your Honour.

THE CORONER: Thank you. Anything - - -

MR SUTTNER: Your Honour, may I respond to some of the points made by Messrs Coleridge and Boe?

THE CORONER: Yes.

MR SUTTNER: First, Mr Coleridge took you to par 168 of the judgment.

THE CORONER: Yes.

MR SUTTNER: And it starts thus. If s 23 had abrogated self-incrimination privilege, those are the words that lawyers recognise as obiter. Those are not binding aspects of the reasoning of the judge. In fact, we would do better to move back, firstly, one paragraph, to 167, where – where the judge said, starting with the text of s 23, it is not expressed to exclude penalty privilege, etcetera. But then to contrast the language of 167, I would take you back to 150, because at 150, Blue J said – started with the following. The following propositions about claiming and establishing privilege in a curial context apply equally to penalty privilege, forfeiture privilege and self-incrimination privilege.

So, first of all, he deals with them equally, but when he deals with his reasons or the basis, he says a witness who wishes to rely on the privilege must make a specific claim to entitlement to the privilege as a ground for not answering it. Now, he qualifies that later, but the point is, here is the place where the point must be taken. And that's the first point I wanted to make. The second point I want to make associates my client's position with the remark made by Mr Edwardson about second readings. First of all, I associate myself entirely with what you said, but I would go one step further.

What the second reading shows you is not what Parliament wanted. It shows you what the Attorney General said. It doesn't show you why people voted for or against a particular proposition, and if I may say, I have also understood statutory interpretation to be, look at the words of the statute. If you can't find what they mean, then maybe you can have a look at second readings and the like. That is not the case here. As it please, your Honour.

MR COLERIDGE: Your Honour, if I can just note one - - -

MR ROBSON: Well, can I have a (inaudible) - unless my friend wants to enlarge on his submissions, or is he replying?

MR COLERIDGE: I wish to add one authority. Your Honour, to the extent that the decision in Bell stands for the proposition that penalty privilege applies in Coronial proceedings, I want to make quite clear that the counsel assisting team's position is

that this – the decision is wrong, and ought not be followed. Mr Edwardson suggested that no case has since questioned the correctness of the decision in *Bell*, that we're aware of. Now, that's for two – well, that's for one very good reason, and that's because immediately after the decision, Parliament realised, my God, this scheme is unworkable, let's amend the Act so that the privilege can be claimed on the certificate given.

But there is an intermediate appellate court decision that suggests that the decision – sorry, the submission we have made is correct, and that Bell might be wrong. That decision is the decision of *Attorney General of NSW v Borland B-O-R-L-A-N-D*. It wasn't reported, but the media neutral citation is [2007] NSWCA 201. And there, at par 10, the court noted precisely the submission we've now made, which was that civil penalty privilege was not a substantive right, but a rule of evidence which did not apply at an inquest because s 33 provided that the Coroner was not bound to observe the rules of evidence.

Now, their Honours didn't need to decide this point, because the case could be decided on another basis, but in my respectful submission, it's clear from the judgment that their Honours were attracted to that proposition. They said:

"The juridical status of the privilege"

Penalty privilege:

"awaits authoritative determination by the High Court but the most recent dicta reject the view that it is a substantive right. Blue J, in *Bell*, found that it was a substantial right."

And then the court goes on to quote the very same cases I have taken your Honour to this morning, which are the decisions in *Daniels Corporation* and the decision in *Rich*, so I would commend pars 10 and 11 of the decision in *Attorney-General v Borland*.

Mr McMAHON SC: Your Honour, just as a formality, I should add we adopt what has been said by counsel assisting, Mr Boe and Mr Mullins.

MR DERRIG: Your Honour, that is also the position of NAAJA.

THE CORONER: Thank you. Thank you.

Mr Robson, you had something further to add?

MR ROBSON: Just briefly, your Honour, in relation to Mr Coleridge's submissions that, as I understood them, that it's not a substantive rule of law, it's an evidential doctrine that applies only in the proceeding in which the penalty is sought. That of course, is contrary to the ruling of Blue J in *Bell* and at paragraph - it doesn't appear to be supported by the decisions in *Daniels Corporation International v Sorby*, decision of the High Court that Mr Coleridge referred to.

Your Honour will see at par 139 of the judgment in *Bell*, Blue J refers to a passage from *Daniels* there and the passage, amongst other things, states that

"The privilege is one of a trilogy of privileges that bears some similarity with the privilege against incrimination. It goes on to say, finally, that it's clear, as noted by Mason A-CJ, Wilson and Dawson JJ in *Pyneboard* that the privilege against exposure to penalties has long been recognised by the common law and is no longer simply a rule of equity relating to discovery."

And then further, at par 156 of the judgment in *Bell*, Blue J refers to what flows from the decisions in *Pyneboard* and *Sorby* and concludes in that passage that the;

"The approach formulated was that penalty privilege was not abrogated by the statute in the absence of express provision of necessary intendment."

Which runs counter to the counsel assisting's submission that the first question is whether the Act preserves or maintains the privilege rather than what we say is the relevant question, does the Act expressly or on necessary intendment abrogate a privilege which has long been recognised by the common law and equity and indeed, of course, in *Bell* it was held that the penalty privilege applied to the Coronial inquest to - in light of the disciplinary action that might flow subsequent to the evidence given by those witnesses. So there is certainly no warrant to read from the decision in *Bell* that it's a privilege that only applies to a penalty imposed in the particular proceeding. It's a privilege according to Blue's analysis which applies to proceedings that may flow later or from the inquest which exposed the witness to a penalty.

In terms of - I won't - in terms of the actions that can be taken under part 4 of the *Police Administration Act*, of course, the reference made to the hearing procedure provided for by s 84B, that of course in the very least the Commissioner under s 78 can effectively summarily dismiss a police officer. But in other jurisdictions it's referred to as a "lack of confidence direction" or something of that kind. In this jurisdiction it's a public interest dismissal, but all the Commissioner has to do there is provide - take into account a written response from the member for service of the s 79 notice.

In my submission that is not a process which will come within subs (3) of s 38 of the *Coroner's Act* which would fit the characterisation as a proper person exercising powers and functions in a judicial manner. So there is a gateway for the evidence to be used, at the very least by the Commissioner, to embark s 78 and dismiss police officers on that basis, your Honour.

THE CORONER: Dr Freckelton?

MR FRECKELTON AO KC: Your Honour, I rise only to join the debate in a very modest sense, to provide some information to you. In the supplementary affidavit of Assistant Commissioner Porter affirmed on 2 September of this year, you will see in Annexure BP 07 that Sergeant Kirkby has received remedial advice in respect of the

text messages involving himself and my instructions are that Sergeant Bauwens has similarly received remedial advice in respect of text messages and he received that advice on 21 September of this year.

MR COLERIDGE: That doesn't mean that the Commissioner is barred from taking action subsequent to this inquest and the evidence and whatever comments your Honour may make, in light of the evidence, to invoke s 78.

MR FRECKELTON: We'd simply say that there are real limitations to the proposition just advanced by my learned friend. Certainly the police officer cannot be proceeded against in two different ways for the same conduct.

THE CORONER: Yes, I obviously need to adjourn to consider those submissions and the decisions that I been referred to.

Did you have something else Mr Mullins?

MR BOE: Your Honour, I was just going to ask, because of the timetabling that is affected by these matters, that for our part we would be content with your Honour announcing a ruling and publishing reasons later rather than needing to explain everything in the very comprehensive way your Honour has done in the other rulings, because if we hold this up now we are going to lose so much more time, which is really affecting the families in terms of being able to assist your Honour with these witnesses.

THE CORONER: Yes. If there is nothing further I will adjourn. We will - I might just adjourn for a sort of longish morning tea and certainly at the end of that I will give you an indication of, you know, the timetabling and where you might proceed from there.

So we will adjourn until 11:30.

ADJOURNED

RESUMED

THE CORONER: Yes, Mr Robson, for reasons which I'll publish at a later date, to the extent that the penalty privilege applies in these proceedings, in my view, it is modified by s 38 of the *Coroner's Act*. And in addition, for the reasons set out in *Ruling No 3*, it's expedient, for the purposes of justice, that Sergeant Kirkby be required to continue to answer the questions.

Accordingly, I will grant Sergeant Kirkby a certificate under s 38 of the *Coroner's Act*.

MR ROBSON: If your Honour pleases. Could I have a moment to confer with my client?

THE CORONER: Sure. Do you need me to go off the Bench?

MR ROBSON: Well, probably ten minutes?

THE CORONER: Ten minutes. Certainly.

We'll adjourn for ten minutes.

ADJOURNED

RESUMED

MR MULLINS: Thank you for that time, your Honour, we're prepared to press on with the benefit of a certificate in appropriate instances, thank you.

THE CORONER: Dr Dwyer.

DR DWYER: Thank you, your Honour, I recall Sergeant Paul Kirkby.

PAUL MICHAEL KIRKBY:

THE CORONER: Sergeant, you're on the same promise as yesterday to tell the truth?---Thank you.

Take a seat.

XN BY DR DWYER:

DR DWYER: Sergeant Kirkby, in front of you should be a document which is now labelled MFI RR, and contains some text messages. I asked you about them – those text messages again – sorry, yesterday. And I am going to ask you some more questions about them now.

It might be a convenient time, your Honour, just so we don't interrupt the flow, going forward. I understand the certificate is formally requested, and will be granted in respect of these matters.

THE CORONER: I can indicate that, yes.

MR ROBSON: Thank you.

THE CORONER: I'll grant that certificate in relation to any evidence that you seek it to be granted in relation to, Mr Robson.

MR ROBSON: Sorry, I didn't hear, your Honour.

THE CORONER: I'll grant the certificate in relation to any questions (inaudible).

MR ROBSON: Thank you.

DR DWYER: Sergeant, yesterday I was asking you some text – some questions about text messages that were sent and received on 3 September 2019. I just want to go back a bit to the first thread of those text messages on MFI RR. If you have a look down the bottom of page one you'll see them. On 3 September, at 11.49, the text exchange beings. You're having a conversation where Constable Rolfe says to you:

“I’m putting in for the TRG spot again, 90 percent chance I won’t get it. They’re prioritising applicants with bush time. All other applicants, three others, have bush time.” And your – sorry, and he goes on to say, “But I’ve to put (inaudible).”

Your response is “True. How does the bush time put your application ahead?” It doesn’t. It’s just an arbitrary decision made by the bosses.”

And Constable Rolfe says “Ha ha, I know aye, they’re fucking idiots. Prioritising lads that go out bush, so they can be lazy and do no work.” And your reply is “There’s probably two places – bush places up north that show you’re keen, if you apply for them. They seem absolute shit holes, and you get worked to death. Apply for them, and maybe the bush stint would be something”, is probably what it means to say.

Yesterday Sergeant, you agreed that the role of sergeant is a very important leadership role?---I did.

And you’re modelling standards of behaviour, in effect, for your team, that is for your patrol group?---Correct.

And can I suggest to you, that the behaviour that you’re modelling in that exchange is that it’s okay to call bosses fucking idiots?

MR ROBSON: I don’t – I’d ask for a certificate in relation to this line. I’m not clear in your Honour’s approach. I raise it before the event, or after the event?

THE CORONER: I am granting a certificate in relation to answers that might criminate your client in any future proceedings.

MR ROBSON: Including internal, administrative proceedings?

THE CORONER: Yes.

So I – it would be good if we could agree on a way for that to occur without having to stand up in relation to each and every answer.

MR ROBSON: Yes, I appreciate that.

DR DWYER: That’s how I understood your Honour’s ruling, and why I raised it at the outset. I understand it to be in effect a certificate globally, that covers any evidence (inaudible).

MR ROBSON: If that’s the understanding then, then I’ll go with the flow.

THE CORONER: Anything that might criminate, in any future proceeding.

MR ROBSON: Yes, but is that a matter your Honour will invite submissions on after the event, or for these to raise before the event, because that might be arguable.

DR DWYER: It's raised and dealt with, as far as I understand it. That – and your Honour has ruled on it, in effect, that that certificate will be granted, to cover the evidence given in these proceedings.

MR ROBSON: Very well, thank you.

DR DWYER: Sergeant Kirkby, I read you that exchange. You have it in front of you. You've agreed that sergeant performs an important role in modelling behaviour. On reflection, do you agree that the behaviour you're effectively sanctioning, or – there, is that it's okay to call bosses fucking idiots?---I think, your Honour, that the – that basically is what I'm saying. That that's the language I'm using, he's using. I think is it myself, yeah that I'm using, so I am saying it's okay.

And - - - ?---Rightly, obviously wrongly.

- - - and you're saying it's okay for Constable Rolfe to have said that bush cops are lazy, because you don't pull him up on that?---I – your Honour, I did – and I don't know whether this is the right – I had a problem with people going bush. We had a – obviously I'm a PG Sergeant, or a Patrol Group Sergeant. We have six people, may be eight people with – if we're flush. If someone goes bush, you don't get replaced, or generally, you don't get replaced, unless they're going for a long time. My complaint, and I think this is where I'm coming from here is, you would have people on the PG who would maybe not work as hard. Their caseloads would rise. And then a spot would come up for two weeks, and they'd put their hand up and disappear. And a couple of them asked, can I get my cases redistributed to the rest of the PG? I – I absolutely hated that. When I'm talking about – I'm not talking about bush – I talked yesterday about being out bush, and how hard you work, and – and what you do. And I know that – and this was a fear of coming here, and answering these questions, that I didn't want the bush cops to say that I was saying all of them were lazy. But some people disappear, because they don't want to answer the radio. Or their case load is getting too heavy. That's – that wasn't the people I was talking about, your Honour.

I appreciate that that's part of your reasoning, which you've now explained to her Honour. But you're familiar with the idea that the standard you walk past, is the standard that you accept? Do you know what I mean by that?---No.

You had an obligation, didn't you, to set a standard, by calling out bad behaviour, or – and by setting a positively good example. Do you agree with that?---I – I do, and – yes I do.

And in effect, what you did in the text message, is leave unquestioned, Constable Rolfe's comment, that the bosses were fucking idiots, one. And that lads who went out bush, did so so they can be lazy and do no work, do you agree with that?---And I – we may have talked about it. I didn't pull him up on that I don't think, because

I probably accepted it. Because I probably thought that that's who we were talking about.

And have a look at page 3. There's another comment about bush cops, on 22 September, line 16. "Everyone knows the police go out bush because they're fucking lazy." That's a comment that you made to Constable Rolfe?---That's correct.

So the behaviour you're modelling is that it's okay to be contentious to bush cops? ---Again I would say it's cops that go bush, not bush cops. Obviously some of the bush cops aren't going to be kind of the hardest workers, some of them. But some of them are. So I don't want to generalise.

And Sergeant Kirkby, do you remember the question I asked you, which is that the behaviour you're modelling in that text message, is that it's okay, to call bush cops lazy. Do you agree with that?---That's – that's what I'm modelling there.

And I'll suggest to you that that was a serious failure of leadership on your part, at that time. Do you agree with that?---Correct, I'd agree with that now.

At the time, is it right that you didn't see any harm in exchanging those text messages with Constable Rolfe?---Correct.

You were exchanging them as mates, in effect?---Yeah, yeah I – yeah. On your PG, you get quite close to people.

Okay. And it was – and you were colleagues having a – having a whinge together, or a moan, in effect, about work, correct?---Correct.

But straight after, on 3 September, if you have a look at page two, is when you continue with Constable Rolfe, and say, "Sorry about the stress caused by losing my shit the other night. Stress you didn't need. You sorted it well. I just had enough. He was the second person to press my button that night." And the reply, as you know, from Constable Rolfe, is "Bro there was literally no stress about it. I'm all for that shit. I've done the same thing to you more than once before. I'm always ready to make my camera face the other way and be a dramatic cunt for the film. Haha." And your reply is, "And the Oscar goes to", and he says, "Haha." I suggest to you that the behaviour you're modelling in that exchange is that, first, it's no big deal to lose your shit on the job. Second, it's no big deal to make your camera face the other way, and act up for the body-worn. And, third, the right thing to do is to cover for your mates if they lose their shit. What do you say to that?

MR ROBSON: Well, there are three (inaudible) issues there, I think (inaudible) fairness to the witness.

DR DWYER: I will take that – all right, I will take them one at a time. First, the behaviour you're modelling is that it's no big deal to, in your words, lose your shit on the job?---I would have to disagree there, your Honour, because I've actually called

him or text him and apologised for losing my shit. I think if I thought it was no big deal, then I wouldn't have done anything.

Do you say that what you did on that day was out of character for you?---I would. I'm – I know my language isn't good. But – and it may stand out a little bit in the police station. But, yeah, I don't – I don't lose my temper generally. So, yeah, I would say it's out of character.

And you were concerned with the way that you had behaved in front of Constable Rolfe on that job?---I was.

What was it that concerned you about your own behaviour? What had you done? You've got a certificate now, it covers you for anything you might tell her Honour. Can I just ask you to be frank about what you were concerned about? ---Your Honour, it is the same as yesterday. I – I don't know what you would call it, a spray, there was a foot chase. I did catch the chap. It was a – I just – shouting at doesn't make – we had a shouting match, but it would - - -

Well, sir, yesterday you – Sergeant, yesterday you said - - -?---But it was - - -

THE CORONER: Just let him finish.

DR DWYER: I beg your pardon, your Honour?---But I don't – it was an – an incredibly heated argument, the language was foul. My language was foul.

What language did you use?---I – I don't know. I – I don't recall. But it – your Honour - - -

Racist language?---Sorry?

Racist language?---I don't think so. I – I don't think so. I – I really doubt it, but I use expletives a lot.

THE CORONER: Who was the chap?---I don't actually know, your Honour.

Where was it? Where was the foot chase?---Just through one of the camps, your Honour. I don't know what the job was. But we ended up – I think that he was the person I was looking for. I don't know what the job was. And he has ignored me. I've started going after him. He started running. And then it was over fences and things like that, so – but I don't know who the chap was.

DR DWYER: And then when you caught up with him, what did you do?---He has crashed into a metal – I think it was like a garden shed. It could be a fence. It could be a house. I just thought it was a garden shed. I've grabbed him and lost my shit.

In what way?---Just shouting.

When you say you crashed into a metal shed, how did that happen?---We were just – we were running full speed. It was – he was trying to get away from me. I was trying to catch up. I don't know how it worked, but he has kind of crashed into the – into the side of it.

And who – what – who were the officers who were there at that time?

---Constable Rolfe has turned up shortly after. I don't know who he was working with. But Constable Rolfe was there, and I think – yeah, they've taken him away.

And so there was more than one officer who took him away, that gentleman?

---He was working – he would have been working with someone.

Was your body-worn video on for that?---No.

Do you know if Constable Rolfe had his body-worn video turned on for that incident?---I don't know, but looking at the text, your Honour, it would appear so.

And do you – am I right that your evidence yesterday was that there was no use of force incident report in relation to that?---I – I didn't do one. I didn't do a use of force.

Why not?---I think sometimes you get it wrong. I think this chap wasn't charged with anything. There was no – well, we didn't get a complaint, and - - -

Did or didn't, sorry?---Didn't, didn't. There was no complaint. But I can't remember what the complaint was in the first place.

Can you remember why he was being chased?---I think, like I said, initially I thought he – and I'm kind of stretching my memory here – he fit the description given.

What offence was the description given for, what were you looking for - - -?---I don't know. It was a – a person, so obviously he fit the description.

And you referred to Constable Rolfe's response in relation to his camera. Can you remember now what he did, with his camera?---No, afterwards, he has – no, I – I don't what happened at the time.

Sergeant, I appreciate that what you did there was apologise to Constable Rolfe for what had happened, because you were worried about it. Is that – that's your evidence?---Worried about how I reacted.

And the question I put to you is that my suggestion is that the behaviour you were modelling in that text exchange was that it was no big deal to lose your shit. The reason I put that to you is, if you look at Constable Rolfe's response to you, you're saying, "Sorry about losing my shit the other night", and his response is, "Bro, there was literally no stress about it. I'm all for that shit. I've done the same thing to you more than once. I'm always ready to make my camera face the other way and be a dramatic cunt for the film, haha." "And the Oscar goes to" is what you say, and he wrote back, "haha." So you're effectively sending the message that it was no big

deal. Constable Rolfe says “Bro, there was literally no stress about it”. And then you engage in a light-hearted banter with him. What you should have said is, “No, it actually is a problem if you lose your temper like that. And I’m going to do something about it”. Isn’t that what leadership was required in those circumstances?---I’ve no doubt that it’s the right response, your Honour. Whether that response made me feel better about my response, how I acted, that it was no big deal – I had obviously thought it was a big deal, because I texted him to apologise. But I – yeah, I let Constable Rolfe down. I let the police down.

The other message I’m going to suggest that you sent there – because of the exchange with Constable Rolfe, is that it was no big deal to make your camera face the other way, and as he puts it “act” or “be dramatic”, you know he uses the term “be a dramatic cunt for the film”. But, in effect, he’s saying – you interpreted him to say, act up for the film?---I did, yeah, that’s what I thought it was.

And the message you send by replying to him “and the Oscar goes to”, is to say, that’s allowed, acting up for the camera?---Basically, I think that’s what I said.

All right. What do you want to say about that, in terms of the leadership role you were supposed to be performing?---There wasn’t – in this instance, there wasn’t a great deal of leadership going on, in this text exchange, in this text exchange.

You were, in effect, comforted by being able to have a laugh with it – about it with Constable Rolfe?---I – I think so. I was – yeah.

Where, in effect, you should have pulled up – pulled him up on the suggestion that you can misuse body-worn video evidence?---I should – I should have.

THE CORONER: More importantly than just the text message was the actual behaviour on the day.

DR DWYER: I think her Honour is referring, of course, to the fact that if Constable Rolfe did do something with his camera, where he turned it around, does that concern you?---Not at the time.

What about now on reflection?---Reflection? Yes.

A bit hard to pull him up on that behaviour, isn’t it, when you’re engaging in a joking text exchange with him?---I – yeah, I think so. Not in all – yeah, I think so.

THE CORONER: But it’s a bit hard to pull him up when he’s doing it to protect you?---Correct, it is.

DR DWYER: I noted it yesterday that 11 of the 45 use of force incidence reports put in by Constable Rolfe were signed off by you. You’re aware of that?---Yes. I am now, yes.

And can I suggest to you that her Honour will understand that as a Northern Territory police officer you often have to deal with challenging behaviours but on this - in these circumstances when you were to supervise Constable Rolfe for uses of force, it was a serious dereliction of your duties to engage in that sort of banter with him about the mis-use of body-worn, do you accept that?---Can you say it again - sorry?

Sure. Given that you were his supervisor for 11 of the 45 use of force incidents, it was - - -?---Yes.

I will just put it as a failure of leadership. It was a serious failure of leadership on your behalf to engage in that banter with him about the misuse of body-worn?
---Yes.

Paragraph 17 of your statement - - -

THE CORONER: Can I just ask this question? At that time, that is 3 September 2019, what controls were in place around securing body-worn video?---Sorry, was that for me?

Yes, if you know the answer. You might not?---Sorry, I didn't hear that.

What controls were in place at that time around securing body-worn video?---When - when you take your camera off it gets docked into a docking thing and that's downloaded.

Is there any way of avoiding that?---No, I don't think so, your Honour. It charges it and it downloads it.

DR DWYER: Is it downloaded for every job, Sergeant, or only for jobs where you specifically ensure that it downloads?---Each - I'm obviously not an expert. Each time you turn it on and it runs for a certain length of time, then you turn it off, you turn it on again, when you download or when you put it in the docking station it downloads and records those times.

The body-worn footage is then attached to certain jobs if they are created, is that right?---Yes, someone would have to go in and - - -

And the body-worn video is not kept forever, is it?---No, I don't think so. There's a certain length of time. I don't know what it is - and it's - it goes.

THE CORONER: So if it's not attached to a particular job it disappears eventually?
---Three months, six months - a year or something like that, your Honour.

DR DWYER: I think we will hear evidence that it is 12 months, your Honour.

But it means, doesn't it, that in circumstances where there was no job created for this person who was chased, that body-worn video no longer exists, is that your understanding?---If - yes, if it wasn't assigned to anything that would be - - -

It would never have come to light?---No.

Is that right?

THE CORONER: Was that part of the decision-making process?---Part of the - - -?

Decision making process about what to do following this incident?---No, I don't think so, your Honour.

DR DWYER: So did you make a decision not to charge this chap who you chased, because you had lost your shit during the job? Lot your temper?---If I remember correctly there was no complaint. Whether that came from comms or whether that came from - whoever - but there was no complaint.

No complaint by the person - no complaint by who?---Whoever called us - whatever reason we went there.

So you were chasing this individual who you didn't know, in the absence of a complaint?---I was - complaint by virtue of maybe someone ringing up and being despatched to a job but if someone can ring up and say, "So-and-so has done something" we still have to get a complaint off that person.

Would you have to write up that incident in your notebook at the time that you chase a person in response to a job?---Normally you would, yes.

It take it that your notebook from August and September 2019, your police issue notebook is still in existence?---Probably.

Where would that be?---Darwin.

Where is that stored? Do you hand that back?---Possibly the Darwin station.

You hand that notebook in when it's full, is that right?---No.

What happens to it?---I keep it.

And have you disposed of any notebook since August 2019?---One as been disposed of .

What date did that cover?---I don't know. But that's the only one I remember.

And why?---I left it in my shirt and it got washed.

And do you put in a report when you lose or dispose of a notebook?---I don't – I didn't. I don't know if you're supposed to.

When did that happen - that you lost that notebook or it got washed and then disposed of?---That would be last year some time.

I take it you'd be happy to look for the notebook that you carried in August/September 2019?---Yes.

To see if you can identify that job?---I would.

THE CORONER: I assume you keep all your notebooks in one place?---I - yes, I think so. Normally in a locker or - - -

Do you think it's in your locker at work?---Sorry?

Do you think it's in a locker at work?---I think so.

MR ROBSON: Is your Honour asking the witness to produce the notebook? Just to be clear?

DR DWYER: Yes, I call for it, your Honour.

Is there - before I finish on that line of questioning, Sergeant, is there any reason why you did not - why you would not have written up that job in your notebook? ---No.

For example, if you lost your temper with that person would you have - - -?---I may have just the date, the time - or the time - or where I was.

Who you were with?---I would've been - well, yes. I would've been working by myself.

Well, Constable Rolfe - - -?---But came - came along.

And did you ever obtain the details of that person? That is did you get a name or date of birth for that - - -?---I didn't, but I believe Constable Rolfe did.

At the time did you see Constable Rolfe make any notation in his notebook?---I can't remember.

Sergeant, you prepared a statement to assist her Honour and it is dated 19 August 2022. At the time that you wrote that statement you say, at par 17, "I have never heard of any member deliberately turning off a camera" - sorry - "I have never heard of any member turning off a camera deliberately to avoid capturing an incident. Was that true at the time you wrote it?---That was - that was true.

Had you forgotten about this text exchange with Constable Rolfe?

MR ROBSON: Well, I object. It doesn't follow from the text exchange that - - -

DR DWYER: No, it may not.

THE CORONER: Have you ever heard of members failing to turn on a camera to deliberately avoid capturing an incident?---No. It still stands, your Honour.

DR DWYER: At the time that you wrote this you had clearly heard of a member turning their camera - or being prepared to make their camera face the other way and act for the film, correct?---Well, I would've read that text in 2019 but the question was - and I wasn't trying to be smart or anything, have I ever known anyone to turn their camera off to avoid capturing an incident and I answered "No".

In relation to - - -

THE CORONER: This particular incident that we're talking about, you were exercising a power and you failed to turn your camera on?---I did.

And was that deliberate?---No.

How could you fail to turn it on when you saw someone - a person of interest - and then commenced a pursuit? How could you fail to turn your camera on in those circumstances?---Maybe I started running and just forgot about the camera. Maybe I - it's a double tap type thing for the camera. Sometimes it doesn't turn on because you don't push it correctly. I think I explained in my statement that I've previously turned my camera on, waiting - or believing that it was on but I'd actually turned the main switch off.

DR DWYER: Constable Rolfe text you, "I'm always ready to make my camera face the other way, and be dramatic" – I'll leave out the next word, "Be dramatic for the film." Had you seen him do that on more than one occasion?---No, no your Honour.

Do you recall him doing that on this occasion?---No I – from the text, but not at the time.

Well now you've refreshed your memory from the text, what do you recall him doing with the camera?---I – I can't remember seeing him, but I – I don't know. At the time, I don't know.

What about now, Sergeant? What do you remember him doing, to act up on the film?---I can't – I think he was shouting. That was.

Shouting what?---I don't know.

Shouting in some way to suggest he'd – that someone had been – a police officer had been injured?---Or that to drown me out, I don't know.

So shouting to suggest a police officer had been injured, or shouting to cover up something that you were saying?---I think - - -

Is that right?---I think the latter. I don't think anyone was injured.

What were you saying, that he was shouting over the top of?---I don't know. I was probably telling the chap what I thought of him.

What Constable Rolfe replies to you is this, if you just remind yourself from page two. Where you're saying "Sorry about the stress caused by losing my shit the other night. Stress you didn't need. You sorted it well." What did Constable Rolfe do, to sort it?---I think he just talked to the chap and took him away, just, wherever he went.

Are you just offering that – that is, are you making that up now, or do you have a memory of it?---Well I didn't – I didn't take him away, so – I didn't have a cage, so.

So are you just assuming that that's how he got out of that area, the person that you detained?---I can't say with confidence that I know they took them, or he took them. But I'm assuming that's what happened.

What Constable Rolfe replies to you is this, "Bro there was literally no stress about it. I'm all for that shit. I've done the same thing to you more than once before." What had he done to you, more than once before?---I – I don't know what that means.

Well you're saying "Sorry for losing my shit" - - - ?---Put – put me under stress, I don't – I don't know.

"Bro there was literally no stress about it. I'm all for that shit." What shit is he talking about?---I imagine giving a verbal spray.

And he says "I've done the same thing to you more than once before." What did you take that to mean?---I – I can't – I really don't know.

The behaviour that you're modelling and exchanging in that text with him, is that it's okay to lose your temper, at the very least, by giving someone a verbal spray. Do you accept that?---I – the text was to apologise for - - -

Sure, but when he replies saying "There's literally no stress about it, I'm all for that shit. I've done the same thing to you." You just engage in light hearted banter.

MR ROBSON: He's already answered this line of questioning, your Honour. It's just going back over the same matter.

THE CORONER: Yes, I think it's been asked.

DR DWYER: I'll move on.

In saying that – here, that you were sorry, about the stress you caused, losing your shit the other night, and this was the second person to press my button, were you essentially saying that you were having difficulty coping with your work load, or anything else at work?---No, I think I'm simply saying that two people pushed my

button that night. Just wound me up, maybe I – I don't know what the work load was like at the time. It's generally heavy. I don't – I don't know what the first chap was – first person.

At par 20 – Sergeant at par 21, of your statement, you say:

“I think it would be naïve to say that working in the Northern Territory Police hasn't affected me negatively. I think this is a complex issue. And I'm unable to answer in a way that will adequately explain or articulate how I feel. I'm asked if I have developed negative attitudes towards Aboriginal members of the community. I would have to ask what community.”

And then if you go down to par 22, you talking about Aboriginal people in Alice Springs, who come in for the sole purposes of accessing alcohol.

“I would have to ask what community would these people belong to. I would have to say, that I do have negative attitudes to these people.”

Did you lose your temper, or lose your shit, in your words, because you were developing negative attitudes towards Aboriginal people in town?---No I imagine, in this instance, it was because, as I've explained, that just getting into the foot chase, someone not listening. Someone trying to get away.

You're reaching out to a colleague here and saying sorry about what happened, he was the second person to press my button. Did you think, at that time, that you were having trouble coping with the sort of things that you were seeing and doing in the force?---Did I think I was having trouble?

Yes, at that time?---No.

What about now, looking back on it?---I think earlier this year, I decided I was having trouble.

And did you reach out for help at that time?---I did.

When you were a sergeant, and you had a number of people in your patrol group, did you see any of them, struggling to maintain, or to manage their temper, when they were on jobs like this?---No, no some – some would surprise you with the language in the muster room, coming back. And it would just be whatever just – people who don't generally swear, would be swearing, and things like that.

What about racist language?---No.

What about language critical of the people who you just tried to arrest, or arrested? ---Yeah, that would be quite common.

Would you talk to them about that in any way?---You would probably find out what – what was happening.

Did you, ever, do that?---Yep, yeah I think that was part of it, when someone would come into the muster room. And they'd be talking. I would go out to see what was happening, if I was there - - -

Were there any – sorry Sergeant. Were there any circumstances where you suggested that people in your patrol group should seek some help – mental health help, support?---Yeah – yes. Both – I – there's a – sometimes situations that you have to go into, events that you have to attend, and things like that. Motor vehicle crashes, and things like that. And so you would put in a – I think it's called an ES – I don't know what ESS stands for, but it's a referral for, and the police psych's would get in touch with that person.

Were there any occasions, Sergeant, when somebody in your patrol group, demonstrated a loss of temper, or a loss of control, that you're aware – you can recall?---Not that I can think of.

Because you're reviewing use of force incidents, that gives you a good opportunity doesn't it, to try and pick up on when someone in your patrol group might not be coping?---By doing the use of force?

Well do you – by doing the use of force review - - - ?---Yeah.

- - - are you looking at body-worn video footage?---Generally.

Including on jobs when you're not there obviously?---Yep.

So it gives you an opportunity, doesn't it, to effectively look at what some of your patrol group is doing, or people outside your patrol group on occasion?---Sometimes people outside your patrol group would put a use of force through another sergeant, because they were there. They're going on days off, and their sergeant might not get to it. You would review the CCTV – the body-worn, the statements, and – and the write up of the job.

So would you – would you always do that, for any use of force incident that you're reviewing? Look at the body-worn video footage, the statements, and the write up? ---Yeah, that's kind of how you do it, yeah.

That – that gives you a good overview, doesn't it, it gives you an opportunity to pick up on any behaviour that concerns you?---I'd have to say no. I – sometimes you would go and see someone with a use of force, and it's – is this what you're saying because they wrote it poorly? Not to get – word it right, so it can get declared or anything like that, but this is what it says, or this is what it appears to, to me, and – so you would talk about the incident. I think I did that once, but that wasn't anyone on my patrol group.

Sergeant, we might be at cross-purposes. What I'm suggesting is, if, for example, you were watching a body-worn video footage, and somebody on your patrol group

or outside it was screaming at an alleged offender, abusive words, or using a tone that was unacceptable, doesn't that give you the opportunity to go and speak to that person afterwards and say, "Listen, I'm worried about you, are you okay? That job looks like it was getting to you"?---No, with arrests, quite – and the cameras aren't particularly good, you will have people screaming, and it will be full – whatever, get down on the ground or something like that. But if they're being dynamic – if – you would have a word afterwards if the arrest has been completed and they're still – but I can't remember doing that.

So you can't remember seeing anything in a review of any use of force incident that concerned you in terms of the behaviour of a police officer. Is that right?---Maybe. No, I'm going to say – going to say no, no, I don't think so. I imagine I would have brought it up if it concerned me, but I would have to say no.

Who would you have brought it up with?---If it would go – I would task the use of force.

Have you ever gone and had a word to one of your officers and said, "Listen, I'm going to approve the use of force, but I'm concerned about the language you used", or anything like that?---Maybe. I don't know.

It sounds like that – that's not something that you would typically do, as a – that's not something that you see as your role in a sergeant position?---I know it's not 2019. In Darwin, I went and had a chat with someone about their language on the body-worn.

What sort of language?---Just using the C word.

Towards an offender, or an alleged offender?---Yeah, yeah, or to – yeah.

By the – you mean C-U-N-T?---Yep.

And was that something that became the subject of a complaint, or something that was guidance given by you towards - - -?---It was guidance – there was no complaint. There was just somewhat of an – not so much an operation, but it was some people in Darwin who had kind of moved in and were living on the park type area, so we were trying to move them along. For whatever reason, I've gone into someone's body-worn and had a look, and that was – I just pointed out that he should mind his language.

I'm not going to ask you for the name of that officer or anything like that, but what had that person said to the civilian?---It was – it – like, a group of people trying to move them along. It was like, move on, C-U-N-Ts.

And they were Aboriginal people. Is that right?---They were.

Did it concern you that the officer using those terms, "move on" – I'm just going to say the language, because it's - - -?---Yes.

Unless her Honour has any objection. "Move on, cunts", to a group of Aboriginal people. Did they – did that concern you that that was racist?---No. I will cut you off before you go too far, it was an ACPO.

And did you speak – you spoke to that ACPO about his language, is that right?
---Yep.

And what then became of that, or what did – what did the person reply to you?
---I think he just said, "Sorry, Sergeant".

If that language was used by somebody who wasn't an ACPO, would it concern you that that might have racial connotations?---No, I – like I said, my language is bad. I might call someone something, but it – like if I call them a C-U-N-T and they're an Aboriginal chap, I'm just meaning they're – they're a C-U-N-T.

Well, would you call a civilian - - -

MR ROBSON: Well, I would have to interrupt you, I mean, now we're examining this witness about something that occurred in Darwin some time, as I understand things. We're not even dealing with matters of supervision of Zachary Rolfe. We've now moved to Darwin, and exploring what's happening in Darwin subsequent to the events the subject of this inquest.

DR DWYER: I don't want to spend long on this, your Honour, but it's pretty – and I don't want to spell it out for this witness either, but there's an issue in relation to the leadership that needs to be taken in the use of language and - - -

THE CORONER: Yes. As long as we don't spend too much further on it, Dr Dwyer.

DR DWYER: Sergeant, would you use that language when you're talking to a group of civilians or a civilian who is an Aboriginal person when you're asking them to move on?---No, I can't imagine.

I'm going to show – move on to an issue involving supervision of use of force on two occasions by you, one of them was the case of Christopher Walker which occurred on 23 June – sorry, 22 June 2019. You were the reviewing officer in relation to that job, correct?---I don't know.

I will show you this document. Just peruse it if you would. For the benefit of my friends, it's 3-162, PROMIS 9005467 case note.

MR ROBSON: Sorry, could I have that again, please?

DR DWYER: No, because I've just given it - - -

THE CORONER: 3-162. And then PROMIS 9005467.

MR ROBSON: Yes.

DR DWYER: You see that, sergeant, it's a use of force from 22 June 2019. It's video – just so everybody understands, that has already been shown to the court, involving an arrest of someone who is suspected to be armed, and the complainant locked himself in a bathroom. Information was given to members that the offender was inside the house and armed with a knife, and we heard evidence through Officer Skyes that three police officers entered the house with their Glocks drawn, and we can see that on the body-worn video. If you have a look at page 3, down the bottom, you see supervisor details, member Kirkby, Paul Michael, "Was the supervisor present during the incident?---No", etcetera. Sergeant, just to refresh your memory from this job, I will just ask that a small portion of it be played. So this is the – Christopher Walker, it has been sent to you – sent to the court officer, and it's from the body-worn video footage from Constable Rolfe.

DVD PLAYED

DR DWYER: That's probably sufficient. Thanks.

Do you recall that you were the reviewing officer now for this job?---Yeah, reading this, yeah.

And did you watch the body-worn video footage, at the time that you reviewed the incident?---Yeah, it says viewed at completion of incident.

And were you present at all on the occasion in relation to the arrest or anything to do with the job?---I don't believe so, no.

You write in the supervision details of the report,

"Entry to property was rapid and dynamic, with a view to protect the victim. Male located immediately upon entry to the house. Clear commands and instructions were given and subsequently ignored, resulting in him being pushed and ground stabilised."

At what point in that video that you just saw did the alleged offender ignore the instructions?---I think he was told to get on the ground.

And do you agree that he was given a fraction of a second to get on the ground with his hands up with guns pointed at him?---I've got no problem with that.

Looking back on that, do you accept that it doesn't appear that he was ignoring commands, or do you maintain that he was?---He was told to get on the ground. He put his hands in the air.

Do you think it was acceptable to push him when he was given a second or around that period of time before he got on the ground?---I believe that's acceptable, yes.

Do you think he might have been terrified when police burst through the door with

their guns drawn or frightened?---I hope so. That was the intention.

Do you think that that might have – in fact, it may not have been a refusal to obey a command, but just needing a second to process what was happening in those circumstances?---No, he was told what to do.

Did you have any difficulty with him being told, “Get on the fuckin’ ground” and pushed at the same time?---None, whatsoever.

You don’t have difficulty with police using that language when they’re talking to civilians in those circumstances?---Civilian offenders?

Alleged offenders?---At that stage?

Well, the evidence given yesterday by Mr Kirkby was that Officer Kirkby?---That’s me.

Officer Sykes, I’m sorry, was that he – they didn’t know whether he was in fact the offender or the victim at that time?---Yep, I’ve got no problem with that language.

Right. The next job that I wanted to show you shortly involved Antonio Woods who made a complaint on 28 June. Just to refresh your memory about that, on that day, Mr Woods was at Warlpiri Camp in Alice Springs, and the police attended in response to a fight. When Mr Woods saw the police, he ran towards the Truck Stop on Stuart Highway. He was chased on foot by police. He tripped and fell to the ground. Mr Woods laid a complaint that while he was lying face down on the ground, a member of the police force kicked the left side of his face and the back right side of his head about six times. He further alleged that after being kicked in the head, a member of the police force pulled him up to his feet by holding the back of his neck and he felt like he was being choked. He sustained bruising and swelling to his face, head and neck, dizziness and shortness of breath. The complaint was investigated and there was insufficient evidence because, in effect, it was his word against the police. But a number of other issues were identified in relation to this matter. Does that refresh your memory?---It does. I did actually see the body-worn.

You’ve seen that recently?---Yes. I can’t remember where, though.

I just ask that it be played briefly now. It doesn’t take long?---I saw it here. Sorry, I was watching that.

When Sergeant Kirstenfeldt – sorry, Constable Kirstenfeldt?---Kirstenfeldt.

DVD PLAYED

DR DWYER: Is it an offence to interrupt a police officer, Sergeant?---No.

Would it justify putting somebody in the back of the cage because they interrupted a Sergeant?---I think he was in the back of the cage.

Well, you heard what Constable Kirstenfeldt said, "Shut up, if you interrupt me again - - -?---Or I'll put you in the back of the cage.

- - - I'll put you in the back of a cage." Is that appropriate?---No, the difference being, if I can, the first one that was shown was dynamic. There was a person with a knife. Someone was hiding in the bathroom. That was dynamic. The bad language, "Get on the fuckin' ground", shouting, dominating, disorientating. But no, it's all over.

A number of issues were identified in the investigation that followed the complaint. The first was that neither you nor Constable Rolfe had activated your body-worn video cameras?---Correct.

Constable Hanson had activated his camera and then deactivated it early. So, there was eight seconds in total. A bit hard to gather objective evidence in those circumstances, do you agree?---In eight seconds?

Yes?---Yep, yep.

And in circumstances where you and Constable Rolfe did not activate your body-worn video cameras?

MR ROBSON: Well, in fairness to this witness, this apparently comes after the arrest.

THE CORONER: Well, the body-worn is supposed to capture all the relevant incidents and no doubt, it could possibly capture relevant statements or observations after the event.

MR ROBSON: No, well that may be so, but the question is put conflating two different times.

DR DWYER: I'm happy to clarify it.

Sergeant, the allegation made by Mr Woods was that while he was lying facedown on the ground, a member of the police force kicked the left side of his face and the back right side of his head about six times, and that while he was kicked – after being kicked in the head, a member of the police force pulled him up onto his feet holding the back of his neck, and it felt like he was being choked. At the time that he was detained, police were exercising a power. Is that right?---Correct.

You were involved in the attempted apprehension and detaining of that person? ---Me?

Yes, you were there at the scene?---No, I've turned up after. Around where the cars are there, that's when I've turned up.

And you saw that somebody was on the ground. Is that right?---No, he was beside

the car or in the car. I remember him being in the car.

You saw that he was being detained by police?---If he was in the car, or being – yes, yes.

Are you happy with that?---Yep.

At that time, police were effecting a power. Is that right?---Correct.

You were then contributing to the arrest power?---Correct.

You should have turned on your body-worn video, in accordance with the rules on body-worn video. Do you agree?---I do.

And you failed to do that?---I did.

And it appears – you accept that Constable Rolfe also failed to turn on his body-worn video?---I didn't know then, but I've - - -

And what you are aware of now is that Constable Hanson activated his camera and then deactivated it early. Correct?---Correct.

And you've been spoken to about that, haven't you?---A couple of matters arising from this incident.

Do you agree that it's not setting a good example to your patrol group if you, as a sergeant, don't use your body-worn video in that circumstance?---Yes and no, in that I was the last one to turn up. There's police powers being exercised. I should have turned my camera on, but I didn't. So, it – the letter of the law, yes, I'm not showing the right thing.

Sergeant, you – if you need the body-worn video played again, we can do that, but I'm going to suggest to you, he's clearly on the ground at the time that you arrive. Would you accept that from me, or would you like to see it again?---Yep, yep, play it again, 'cause - - -

The one we just played, Antonia Woods.

DVD PLAYED

THE WITNESS: Sorry, apologies, if I got it wrong, but my memory was, I was looking at him into the cage. I thought it was all over. But if he was on the ground, he was on the ground.

Can I suggest to you that you appear to be looking down?---I couldn't see him then.

I see. I'm looking up at the screen - - -?---Okay.

- - - above your head?---Okay.

It may well be lighter than what you're able to see, but I'm going to suggest to you that you're looking down?---Yep.

Would you like to come and stand back here and have a look at it on the screen above you?---Okay.

Would your Honour permit that to happen?

THE CORONER: Sure. Are you suggesting that we are inferring that he's on the ground because that's where people are looking, or are you suggesting that you can actually see him on the ground.

DR DWYER: I think in combination of the fact that that's where it appears the sergeant is looking and the words of Kirstenfeldt in relation to putting him in the truck if he interrupts again. I'll just see if - We will just play this first.

DVD PLAYED

DR DWYER: Your Honour, I am assisted by Mr Coleridge and I think the sergeant would be too and I will show the sergeant over the lunch adjournment, there's actually other footage that I'm told does show him on the ground as well.

THE CORONER: Right.

DR DWYER: Officer, additionally in terms of the things that you were spoken to by management about these issues, you accept, don't you, that Mr Woods made a complaint about being assaulted in your presence?---That's - yes, I was spoken to about that. I can't remember it. But I'm quite happy to accept that, that he said he was kicked in the head or something. I think that's why I'm leaning forward and I'm looking at him, and if he said "I was kicked six times in the head" or "the face" and I'm looking and there's nothing there, then I think they said, "What should we do with him?" I said "PC and if he wanted to make a complaint he was going to be in the watch house."

"PC" is "protective custody"?---Protective custody.

But Sergeant, in those circumstances where that gentleman is complaining of having been kicked by police, it's relatively dark outside. It's nevertheless, a serious complaint of being kicked in the head. You're under an obligation aren't you, in accordance with your general orders, to record the complaint?---That was one of the things I got in trouble about, that I didn't take a complaint.

So is the answer to my question "Yes"? "Yes, you were under an obligation?---Yes.

And you have since been spoken to about that by management, correct?---Correct.

And you accept that you didn't follow the general order because you didn't record the complaint - -?---That I didn't record the complaint.

And what the general order required - and for the benefit of my friends, it's 17-27 if you look at clause 74:

"A member receiving a complaint about the conduct of another member must enter details in a particular area, ascertain the complaint and what further information and witnesses or evidence they have to support the complaint, determine the type of outcome that is being sought".

And you were - it was your obligation to do that because you were in the position as the supervisor on that occasion, correct?---Correct. Correct, that's why I received the remedial.

And by "remedial" you mean remedial instruction, is that right - remedial guidance? ---Guidance, yes.

Another thing that you were advised about was the investigation identified that Constable Kirstenfeldt's interaction with Mr Woods at the time was rude and uncivil. You were present during that interaction and you didn't stop him (a) and you didn't criticise or condemn the behaviour, do you agree?---Correct.

So I asked you at the beginning of my questions today about the standard you walk past is the standard you accept. You're effectively condoning that behaviour if you don't condemn it in your role, do you agree?---Correct, and that saying probably fits better now, or I understand it.

Paragraph 20 of your statement that was prepared for this inquest you say, "Despite the above" where you are talking about our shock at the state of Kintore -

"Despite the above, I enjoyed nearly all my time working in communities. I have never seen and racism directed at Aboriginal people whilst working in the Northern Territory Police. I've seen plenty of frustration displayed by police members at some of the actions of Aboriginal people."

Your evidence is at that time, of doing your statement, "I have never seen any racism directed at Aboriginal people whilst working in the Northern Territory". You've certainly heard racist words used though, haven't you?---I don't think so. I look at the texts that are out and I haven't heard those - the closest thing to a racist comment - and I've already talked about it, I just didn't add the - there's someone referring to someone as a "black - " and that's why I went and spoke with the - with the chap. I was - to be honest I was confused as to what to do with an Aboriginal calling an Aboriginal a "black".

You've clearly seen racist language directed at Aboriginal people in text messages, haven't you? Or directed towards or being used to describe Aboriginal people in your - in text messages, haven't you?---In mine, or?

You have used racist language yourself and seen it in text messages. Do you agree?
---No.

Have a look at page 1 of MFI RR. The exchange is this - it begins on 22 June 2019.

"Hope you've got your body-worn on ha ha". "On the whole time." "Who was the silly bitch?"

You write. And Constable Rolfe replies; "Fuck no. Some white bitch who thinks she's Aboriginal". And your reply is: "Lying in the dirt, pissed, doing a fucking good impression." Do you think that's racist, Sergeant?---I'm going to say yes. I'm going to say yes. I'm not even going to try and defend it, sorry.

So can I suggest to you that the behaviour you're modelling there is it's okay to engage in a racist exchange?---No, in that - it was the only - yeah, I would say my response is racial - racist. I don't - - -

What is the difference between a response that's racial and a racist response?
---I don't know, it was a racist response.

I appreciate this is difficult, to look back on this and it might make you feel uncomfortable but it's important to get your honest reflections on this. Do you regret having that exchange with Constable Rolfe?---When it came out I wondered whose it was and then it was mine. I went and - I went and apologised to some friends for this text and I told them it was mine.

Some Aboriginal friends?---Yes.

I take it that on reflection, given your response today, Sergeant, that you feel a sense of shame in having engaged in that text exchange?---Yes.

When you look back on it, do you accept that it was a failure of your leadership to engage in that exchange with a younger officer who was on your patrol group?
---I think it was a failure of a lot of things, but yes, there was no leadership shown there.

And the message you send, can I suggest to you, by engaging in that exchange, is that it's okay for a younger officer to engage in racist exchange? You sanction it, in effect?---Yes, I think so.

Do you accept - reflecting on it now - that racist language can be dehumanising - or is dehumanising I should say?---To be honest I don't really know what that means.

Okay. It really has the potential, doesn't it, to stop somebody seeing the person and to allow them to just group somebody together and have a bias against a group?
---I think so. I think we create groups.

This exchange, 26 June, happens at 8:10, it's the same night as the Christopher Walker incident, that I showed you the video of?---Sorry which one?

This exchange about – that I just read to you?---Okay, yep, yep.

It's clearly involving a woman, so it's not the same exchange you're talking about. Do you know whether it was before or after that incident?---I don't know, I - - -

If you stop seeing a person, and you use racist language, it may well lead to you treating them in a different way. Do you agree with that?---I – I don't know. I don't know.

Do you accept the possibility that if racist language is used against somebody, and normalised, then Aboriginal people may be mistreated, because they're in effect, seen as a different – as different?---I'm going to say yes.

Your Honour, I'm reminded it's 1 pm. I have about ten or 15 more minutes.

THE CORONER: We can take the lunch adjournment.

And officer we'll take the - - -

Sorry, Mr Suttner wants to - - -

MR SUTTNER: Your Honour, if I can just have one minute before you take the adjournment. I wanted to let you know, as soon as possible, and that is at noon I received and – Ms McNally and I received instructions to take the decision you gave this morning, on review. I raise it for two reasons. One is so that we can perhaps – people can have time to consider exactly how we will proceed with my client. That's one matter. The other is you accepted the invitation from Mr Boe this morning to give a decision without reasons.

MR BOE: No, no, I didn't say without reasons.

MR SUTTNER: Without immediate reasons.

MR BOE: No, what I said was, we would be content, if your Honour gave your decision, so as the matter could proceed, with the view to giving reasons later, if necessary.

THE CORONER: Yes, I - - -

MR SUTTNER: I'm not criticising anybody. All I'm saying, is the reasons would be of assistance, both to us in formulating our case, and of course, obviously to the Supreme Court. So I just mention that. But I wanted to let you know, as soon after as we received the instructions as possible.

THE CORONER: Sure, thanks for that.

Officer, we'll take the lunch adjournment. We'll be back at 2:00?---Thank you.

WITNESS WITHDREW

ADJOURNED

RESUMED

PAUL MICHAEL KIRKBY:

THE CORONER: Yes, Mr – sorry, Dr Dwyer.

XN BY DR DWYER:

DR DWYER: Sergeant, you've still got MFI RR in front of you. I haven't got much longer with it. But if you wouldn't mind, please, having a look at page three. This is an exchange with Constable Rolfe on 22 September 2019. And you say to him, "Problem with your application?" Are you referring there to the application to the TRG that Constable Rolfe made?---Yes.

And he replies:

"Nah, application was fine. Except that Dashy wrote a stupid comment, and Vicary didn't fill out her bit at all."

Who's Dashy?---Peter Dash, I think, was either the officer in charge. He would have been a Senior Sergeant.

Officer in charge of the TRG?---Of – of the – no sorry - - -

Sorry?---Of the Alice Springs Police Station.

And Vicary? What was her role at the time?---Superintendent Pauline Vicary, I think at that stage was a Superintendent at the Alice Springs Station.

Alice Springs, thank you.

"Nah application was fine, except that Dashy wrote a stupid comment, and Vicary didn't fill out her bit at all. But they reckon that the other applicants have longer and more diverse careers than me. And recommend I go out bush for 12 months, ha ha, fucking joke." And then your reply is, "That's their standard line now. Everyone knows people go out bush because they're fucking lazy. May be that's who they're looking for now. The order of preference now is blacks, chicks, gays, and lazy fucks, then Zach."

When you heard that text message come out in the press, did you realise you'd sent it?---Yeah prob – oh I don't – I can't remember.

I've asked you all the questions that – and you've acknowledged the important role that sergeant's play in leadership and modelling behaviour. The behaviour you're modelling, to a young officer there, is that it's okay to be racist. It's okay to be sexist. It's okay to be homophobic. Do you accept that?---No.

Why not?---I've thought about how to explain this, and I'm not saying it's a joke, but blacks, chicks, gays, I forgot the other one, they're not the subject of my text. That's just an order I've put them in. The subject of – is the selection panel, or the selection process for a job. So I'm not making fun of Indigenous people, and I – and I know I could have written that better. I could have said Indigenous. I'm not making fun of that. I'm not making fun of women. And I said "chicks". I'm not making fun of gay folk. I've just put them in an order as I saw them. Basically I'm saying that to him, to Zachary Rolfe, that it is an order that's not on merit, so much. That race plays a part, equality plays a part, inclusion plays a part. I didn't make fun of anyone. So I did take offence at the way the – the text was reported. Because it wasn't meant like that. I've just – just put them in an order.

Well Sergeant, let's look at it carefully though. So I appreciate – well aren't there two separate issues? You're saying to her Honour are you, that you didn't mean to be offensive when you sent that text message?---To be offensive to anyone – I'm making fun – well, the subject of that text, is the selection process.

You – are you having a joke with Constable Rolfe in that text message?---I think – I – consoling probably isn't – he's upset that he's missed out. And I think that's what it is. And whether that's a poor attempt at being a mentor, at being a friend, at being a supervisor, that's what that is all about.

But Sergeant, let's just be real about it. You're not saying, look mate at the moment, in terms their selection process – I'll start again. You're not saying mate, in terms of their selection process, they've got to take into account inclusion and diversity, better luck next time. You're saying, "The order of preferences now is blacks, chicks, gays, and lazy fucks." There's a group of members of the community that you're including there, who come above Constable Rolfe. "Blacks, chicks, gays, and lazy fucks." I don't know if they're supposed to be in any particular order. But you've certainly grouped them together there, haven't you?---Yeah, no that is the order.

It's pretty disparaging, about everybody in that group, isn't it?---No, I don't think so.

Do you agree that what you're intending to do is console him saying, it's not a merits process, you'd be better than a whole lot of people, but unfortunately they put blacks, chicks, gays and lazy fucks first?---Yeah, and I think the lazy fucks obviously refers to what we were talking about, people going bush. And as I explained, people disappearing to go bush, because they wanted to dodge the radio, and not do much.

I - - - ?---But I – that – earlier I said I won't defend what I said. But here I am.

You're defending that, you think that comments okay?---I'm – I'm defending it.

Okay. You think that comment was okay to send to a - - - ?---It's probably not a classy comment, but it was never, ever meant, to disparage anyone.

I'm going to suggest to you that regardless of what you meant by that text message, it has the effect, of disparaging the group of people that you include in there. People

with – with dark skin, women, homosexuals, are all disparaged by that text?---Well that was never the intent, and that's not how I see it.

What about the effect of it though?---What do you mean the effect?

Do you accept that the effect of it, is to put down, or disparage, people with dark skin, women, and gay people?---No I just said earlier that that was never the intent.

What about the effect of it - - - ?---It was never the meaning.

What about the effect of it?---No.

Rolfe was – Constable Rolfe, I should say, was applying for the TRG?---Correct.

How many male heterosexual white officers have missed out on jobs in the TRG, due to positions being given to people with dark skin, or women, or homosexuals, do you think?---I don't know.

Do you seriously think that's what happens? Is that your view?---That's – that's what I wrote. I – and I'll say again, that was – I wasn't disparaging anyone.

And I'll ask you my question again, is that your view, as a sergeant in the police, that it's not a merit based selection?---Yes, sometimes I think it is.

And do you think that's because, what political correctness has gone mad?

MR ROBSON: What's the relevance of that (inaudible).

DR DWYER: I press the question, because it's clear – I'll be making a submission about what this text message means, and I'm trying to get to the bottom of what the sergeant intended by it.

THE CORONER: Excuse me?

MR ROBSON: Pardon me - - -

THE CORONER: Was there something further that you needed to add?

MR ROBSON: No, thank you, your Honour.

THE CORONER: Do you press the objection?

MR ROBSON: I've raised the objection, and if Counsel - - -

THE CORONER: All right, well I'll hear you.

MR ROBSON: Just the relevance of that question.

DR DWYER: I'm happy to withdraw it, and ask it another way if it doesn't – to save time.

What did you – you were questioning, were you, the merit selection, for the TRG? Is that right Sergeant?---I – I wasn't getting too into the nitty gritty, I guess, of the selection process. I was just saying here's a selection – the selection process has worked against you this time.

You're trying to sympathise with your mate?---I did.

Right. You're tried to console him because he missed out on a spot he wanted?---I did.

And you're trying to suggest to him, don't worry mate, it's not merits based, you – you haven't missed out because you're not good enough, it's because these other people are being put in before you?---Yes.

And you're suggesting, aren't you, that you were not satisfied that it was a merit based process to get into the TRG?---I probably – probably didn't go into it that deep.

You might not have thought about it that deeply, but that's what you were suggesting at the time wasn't it?---Sorry, what was the question?

That you were suggesting that it wasn't merit based, that Constable Rolfe had missed out because this other group of people, blacks, chicks, gays, and lazy fucks, were getting in, when meritorious people were missing out?---Yeah I – I guess, I – yeah, I don't know. I don't know, sorry.

Isn't the implication of that text message, that white male heterosexuals are missing out, because there is this affirmative action in favour of people with dark skin, women and homosexuals?---I think that's going a lot deeper than I ever intended that – that text to be.

Well what did you mean by it? What did you intend for it?---You missed out.

Well why did you say, if you just intended he missed out, the order of preference now is blacks, chicks, gays and lazy fucks (inaudible?---I don't know, there might have been something going on at that time. I don't know. I – and I think it was one of the reasons given why he didn't get it was his application wasn't diverse enough.

What he just said to you was "They reckon the other applicants have longer and more diverse careers"?---Yeah.

Not that they have a more diverse background, but that they had a more diverse - - - ?---Not diverse – diverse background, diverse careers, and that being bush.

Yes. That's the explanation Constable Rolfe gives to you?---Yep.

And the reply, is something quite different. "Everyone knows people go out bush because they're fucking lazy, may be that's who they're looking for now, the order of preference now, is blacks, chicks, gays, and lazy fucks, then Zach." Aren't you sending him the message that it's not a proper merits-based process and that those other groups get put before him?---Probably.

Do you want to reflect on your earlier comment that you stand by that?---I do.

What do you say about it now? You do stand by it still?---It was – I don't know the seriousness which I gave that text.

So, I think I asked you at the beginning of these questions, were you trying to make a joke or was it your genuinely held view?---I think – I don't know, console's not the right word. But I think that's probably as close as I'm going to come. He was upset. He'd missed out on a spot, supposedly because he hadn't been bush. And we talked about going bush and there was places up north, he said he didn't want to give of his life. He probably didn't see his policing career being that long. It wasn't going to be a 20-year career that – I think that's how he saw it. He didn't want to spend a year in the bush.

I'll come to those text messages shortly. Just in relation to the question, I'll just go back to what I asked you initially. In relation to the message sent in terms of your leadership role then, I was suggesting to you that regardless of your intention, the message that you sent by virtue of that text is that it is okay to be racist and it's okay to be sexist and it's okay to be homophobic. Would you accept that that's the effect of that message?---No.

Would you accept that the effect of that message is that it's okay to make jokes about those people in society; women, people with dark skin and homosexuals?---No. I'm not – Ricky Gervais breaks down the joke, and he explains what the subject of the joke is. And I think I've done that. The subject of that, if it is a joke, it's a selection process.

I don't think we've established yet whether it is a joke, but in response to my earlier questions, you said that your view was that you questioned whether to get into TRG was a merit-based process?---If spending a year out bush would put someone ahead of someone who maybe has more skills, then I would question that fact it was merit-based.

THE CORONER: Do you know who got the position in TRG? You don't have to tell me who it is, I just want to know if you know?---Possibly, but I don't want to say.

Were they a woman - was it a woman who got that position?---No.

Was it someone who had dark skin?---No.

Was it someone who was a homosexual?---I don't think so.

Why on earth would you write to him that the order of preference is blacks, chicks, gays and lazy fucks?---I don't know.

Just in fairness to you then, Sergeant, I anticipate submitting in relation to this text message that this was a failure of your leadership, because you sent a message to a young officer, as in you set a standard for a young officer, that it was okay to speak about that group of people in our community in that disparaging way. Do you accept that, on reflection?---Do I accept you're going to write a submission.

No. Do you accept that you, in effect, gave Zachary Rolfe the impression that it was okay to be disparaging about people in our community who are - - -

THE CORONER: There's not really people in our community, it's people in the police force, other police officers.

DR DWYER: Do you want that question again? I'll just incorporate what her Honour just suggested?---Sorry, I thought she was talking to you.

Sorry, Sergeant, what her Honour is assisting me with is, in effect, you send a message to Zachary Rolfe that it is okay to be disparaging about police officers who are black, or police officers who women, or police officers who are gay. Do you accept that was the effect of it?---No.

That message exchange goes on to say – you write to him, “Who recommended you go out bush, Vickery - or the TRG panel?” And you'll see that the recommendation for Constable Rolfe as he indicates earlier, was:

“They recommend I go out bush for 12 months, ha ha. Fuckin' joke”, is what he writes.

And your response is, “Who recommended you go out bush, Vickery – or the TRG panel?”

He says, “I know aye. I don't want to get to TRG bad enough to waste 12 months of my life out bush doing nothing. I'm definitely last on the list, ha ha. The police selection panel, I called and asked for advice to improve my app, and they said, 'Apps fine, but go out bush'.”

So, you see there that what Constable Rolfe is saying to you is that he had got the recommendation to go out bush for 12 months from the police selection panel. And your reply is:

“I went to Nigel Bennett's yesterday for coffee and he was saying the same thing. Bush experience will trump everything. Amazing. I get to read applications that guys have written to try and get out of Alice and the shit they put in there. Imagine being in Alice Springs attending one job a day, and then spending the rest of the shift writing all about that job to the bosses. The next

day, you spend all day driving the cage to the workshop and then go shopping while the cage is fixed. When the cage is fixed, you drive it back to the station and go home. And then due to that being above everyone else for any job you apply for.”

And his reply is, “I know, aye, ha ha, fuck man, what do you do”, et cetera.

I suggest to you that the behaviour you’re modelling in that exchange is contempt for police who want to go and work in the community for 12 months or more. Do you accept that that’s the effect of it?---In that community?

In a bush community. In a community of Aboriginal people, regionally in Alice Springs, is what he was suggested to do, wasn’t it? Rolfe was getting suggestions from the police selection panel that if he wanted to get into the TRG, it would be helpful for him to go out bush, meaning it would be helpful for him to go and work in an Aboriginal community as a community police officer. You understood that, didn’t you?---Yep.

And you’re contemptuous of that in your exchange with him, aren’t you?---Exactly.

And you’re basically saying to him at 4:43 in that exchange that if you’re a bush police officer, you’re a community police officer, you’re effectively going to attend one job a day and spend the rest of the shift writing up all about that job to the bosses, and then drive the cage to the workshop and go shopping when the cage is fixed. That’s what you’re suggesting life is for a community police officer, isn’t it?---Tongue in cheek, yes.

Can I suggest to you that what you’re modelling there or suggesting is okay for Constable Rolfe is to be contemptuous of police who want to go and spend 12 months working in an Aboriginal community?---He didn’t want to go bush.

Just reflect on my question, if you will, Sergeant?---Yep.

I’m asking you about your role in these text messages, nothing about what was in Constable Rolfe’s head. I’m asking you about your leadership role and the way in which you might have let yourself down and let the police down. What you’re expressing to Constable Rolfe - - -?---I don’t think I’ve let the police down.

What you’re – well – thank you for clarifying that that’s your thought?---You’re welcome.

In this text message, I’m suggesting to you that you were modelling a type of behaviour, an attitude for Constable Rolfe. Do you accept that?---No. I think it’s just – it’s a text. It’s getting him over the fact he’s missed out on that position. It’s encouraging him. Softening the blow, maybe. That – like, I’ve written that there, that would be an extremely long text. It’s tongue in cheek. I know bush cops don’t go to one job a day.

But that's the message you're sending to Constable Rolfe, isn't it? You're sending him a message that that's all they do, they go to one job a day?---No, I don't think that is the gist of the text.

Well, I suggest to you that that is the gist of the text, that in fact, bush cops don't have to work very hard. Would you agree with that?---No, I don't think that's it.

And I'm going to suggest to you that that fits with your earlier comment that lazy cops go out bush?---For limited periods of time.

So, you're just trying to say that the cops who go out bush just for 12 months are the lazy ones?---Or two weeks, or some of them, not all of them. I'm not saying that. I think too much has been read into my text.

THE CORONER: I think we can move.

DR DWYER: Yes.

So, I take it you don't withdraw anything that you suggested in that text message. You still see it's fine?---Yes.

Okay. Finally then, the last page there

Finally then, the last page there, you're writing to Constable Rolfe about a complaint that you're having to answer, is that right?---Where? Which one is it - 21?

Just have a look. The one that begins, "Well, fuck me" - 17 October?---Yes. Yes, what was your question again?

You're writing to Constable Rolfe to complain about the fact that you're having to answer a complaint made by a member of the public, is that right?---No. That I'm being questioned - I think again maybe for the third or fourth time about an incident that was over a year old.

Okay, so I'll just clarify the incident. You say:

"I'm having to answer more questions about an incident over a year ago. Some turd claimed I knocked him off his bike with 301 and then roughed him up."

What is "301"?---A vehicle - the sergeant's vehicle.

So a member of the public had complained that you'd knocked him off his bike with a car?---No. No.

Who had complained that you knocked him off his bike with 301?---So the complaint was coming from PSC that I was speaking to them again.

Sorry, let me - we're at crossed purposes. You were speaking to PSC because a member of the public had made a complaint that you had knocked that person off his bike - his or her bike - with 301?---No.

What was the complaint? What were you speaking to PSC about?---About that a complaint had been made by someone who was riding a pushbike that I had knocked him off his bike and then roughed him up.

And you were saying to Rolfe, "Well, this is" - effectively, "This is ridiculous - well, fuck me, I've got to go back and answer more questions"?---Correct.

"All seems well but now they've got a hard on over the fact that I used 301 to try and block him in. They're now asking a fourth lot of questions. I think they pick someone and then just click on him, finding my breaking point maybe." You're just having a whinge to a colleague effectively, are you, about having to go to PSC and answer that complaint?---Correct.

And he writes back:

"Over a year ago. Fuck they're gay cunts. Yeah, just find a name and go for you hey, over and over - fuck 'em, just let them waste time and then if they ever have enough evidence just stress leave until they let it go, seems what everyone else does."

And then there's no significance response from you in reply?---What do you mean, "No significance"?

I can find it for you if you like?---All right.

I will find it for you before you finish giving evidence but can I suggest to you - I might be able to do that quickly?---Yeah, I was just - I had nothing here, that's the only reason I was asking.

That's right. That's right. But just let me clarify it?---Okay.

Your response to Constable Rolfe - just to complete that is, "All the best"?---"All the best"?

"All the best" is what you write to Constable Rolfe in reply. Would you like to see that?---Yes, if I could, 'cause - - -

All right, sorry Sergeant, let me clarify. "All the best" is what you write to Constable Rolfe on a different day?---Yeah.

I think in fact after what happens after the tragedy at Yuendumu, but in any event, the only exchange in relation to this particular point that occurs on 17 October and the text messages that we have are the ones that are set out in that MFI?---Yeah.

You're upset, obviously, at having to go to PSC for a fourth time to answer a fourth lot of questions, correct?---Yes, well they will send you questions or - and you answer them.

Okay, and you're having a whinge about that to a member of your patrol group, in effect?---Correct.

But did you accept that what you're sending - the message you're actually sending is that you're contemptuous of that PSC process?---Somewhat. The first response I sent I believe the - I received an answer, good response, and I believe that was at - - -

It's part of your role as a sergeant isn't it, to model respect for other police officers? ---Yes, yes.

THE CORONER: And police processes?---Sorry ma'am.

And model respect and value in police processes? I'm suggesting that's part of your role?---Yes, yes.

DR DWYER: And you were not doing that when you sent hm that text message, that is you weren't modelling respect for other officers or police processes?---No, I think at this stage I was having a good old moan with a friend.

But he wasn't just a friend and he wasn't just a member of your patrol group, Sergeant. You were the sergeant and he was a number of ranks below you and you were supposed to be modelling good behaviour for him. Do you accept that? ---Yes, and no, again. Yes, in - in a role as a supervisor and a - or his sergeant and a constable. No, in that if - and I think possibly I was on leave at this stage, I'm not quite sure, then it's as a friend.

I have got a document in front of me which is the "Northern Territory General Order Code of Conduct and Ethics", so for the benefit of my friends it is at 17-28 and Ms Wells is just going to give you a copy of that. Have you seen that document before today?---Probably.

There's a number of clauses that might be relevant, but have a look at page 5 if you don't mind. There's a sub-heading, "Personal conduct" 19 - 20. 19 is:

"Members must act with honesty and integrity at all times. Members must always conduct themselves both on and off duty in a proper manner that does not bring or has the potential to bring discredit to or adversely affect the police force".

The text message that you sent Constable Rolfe has the potential to discredit the police force doesn't it?---No, if it was a text message it was between Constable Rolfe and myself.

But it has the potential to impact on his view of the PSC, doesn't it?---He can make up his own mind on that one.

Even though you're a sergeant and you're supposed to be in a role model - - -?
---Even though I'm a sergeant and I'm his friend and - yep, he can make up his own mind.

So once you form a personal friendship with somebody did you just put to one side your obligations as a sergeant?---No, that's - that's not what I'm saying but - and hence the answer before - yes and no.

His reply to you is this:

"Over a year ago. Fuck they're gay cunts. Yeah, they just find a name and go for you, eh, over and over. Fuck 'em. Just let them waste time and if they ever have enough evidence just stress leave until they let it go - seems what everyone else does."

What did you think of that text message when he sent you?---I don't know what I thought of it.

What do you think about it now?---Not - not too much. It's just an answer.

So you don't have a problem with that?---No.

You don't have a problem with a police officer in the Northern Territory, in your patrol group, expressing that view as to firstly, stress leave?---No, because some people did go on stress leave if you will - if it was stress leave and sometimes you wondered but I was never going to ask why someone was - had gone off.

Sometimes you wondered if other police officers had been gaming the system - had been faking being mentally ill so they could take advantage of the generous (inaudible) - - -?---For what, yes. Yes.

Stress leave provision?---Yes.

Well, what do you think of that? Of the fact that - do you believe officers have done that?---Probably. I imagine they have.

What do you think of that behaviour?---I don't like it.

What do you think then of Constable Rolfe's suggestion to you:

"Fuck 'em. Just let them waste time and then if they ever have enough evidence just stress leave until they let it go".

That's what he's suggesting to you isn't he?---I don't think he's suggest - I think he's stating that's what happens. I don't think he's telling me to go on stress leave.

Well, you're complaining about the process. He's then referring to them in an abusive term and homophobic term, do you agree---That's a homophobic term, yes.

And then he says:

“Just find a name - they find a name and go for you eh over and over. Fuck 'em, just let them waste time and then if they ever have enough evidence just stress leave until they let it go”.

That's his suggestion to you at that stage isn't it?---Yeah, I don't think it was a serious suggestion. I think he was just saying - just.

He's certainly expressing a belief there, or he appears to be isn't he, that there are members of the police force who gain the system by pretending to be mentally ill - - - ?---Well not necessary - - -

- - - to get out of answering a complaint?---Mentally ill, may be like sick leave, may be an injury, or - - -

“Just fake it until you get out of answering a disciplinary complaint”, that's what he's - - - ?---Yeah but that – that doesn't make sense, because it doesn't go away.

So you just didn't take him seriously in that?---No.

But you let him express that view, without – or you let him make those comments, without correcting him, didn't you?---Yeah I didn't correct that text, no.

And what I said to you earlier, about the standard you walk past, has been said on a number of different occasions. But one of them is, David Morrison, when he was the Chief of the Army, Lieutenant General, said this, at a speech about the treatment of women. “The standard” - - -

MR ROBSON: I object to this, your Honour. What is the relevance of this?

DR DWYER: That's fine. I'll withdraw that. I'll ask it again. You agreed earlier - - -

THE CORONER: I'm just going to suggest that you didn't correct the text, because it was a view that you shared?---No, I didn't – no, I didn't share it.

I thought you shared it with - - - ?---Sorry, that some – some people went - - -

(Inaudible)?---Not for – for complaints though. That didn't make sense. If – if there's a complaint against you, if you go away, when you come back it's still there. It still has to be answered.

DR DWYER: You didn't correct the text, because you didn't see it as your role to demonstrate any leadership, on that issue, when you were just chatting as a – a (inaudible) friend?---I think I was being a friend here.

And you didn't correct him, or say anything about the use of the term "Gay cunts", a homophobic slur?---No.

And that was, in those circumstances, sending him a message that it was okay to use those terms?---I think that's – I don't know. I didn't even think of that.

I suggest to you, that when you think about it now, you would recognise it as a failure of leadership. Do you accept that?---No, no.

Do you think you let yourself down, or the police force down, in any way, by not correcting that, and pulling Constable Rolfe up?---No, like looking at it now, it doesn't look good, but did I let myself down, do I think I failed in – in my leadership? No. That's – he talked that way on that occasion, and he said that.

All right, so just to be crystal clear, in your role as a sergeant of a patrol group, you don't think that you have any obligation to pick up homophobic language used by members of your patrol, in texts?---If – what was – yeah, I – the question I'm asking myself, is what role was I in at that time. And I think there, I'm just a mate.

Okay. Last question. On 11 November, several days after Kumanjayi passed away, there was a gathering at Constable Rolfe's house, as a formal debrief, or informal debrief – sorry, informal debrief. Did you attend that?---No.

Nothing further, your Honour. Your Honour, I'm informed that Mr Suttner has something to say.

MR COLERIDGE: Your Honour, I just ask that the matter stand down, there's a matter on which your counsel assisting team may need instructions.

THE CORONER: All right, can we just finish this witness?

MR ROBSON: No, could that not happen (inaudible) afternoon break, so we can get - - -

THE CORONER: I'll check.

Is it something that we need to sort out now? If we do need to sort it out now, that's fine, but what I'll do is take the break - - -

MR COLERIDGE: Your Honour has just been served with an originating motion. Your Honour, is a party to those proceedings, and your Honour might need to give your counsel assisting team, or independent counsel, instructions, about whether you wish to make an appearance in those proceedings. I'd asked Ms McNally

whether we could have some time, and we were told, "You can come if you want."
So I'd ask that the matter stand down briefly.

MR SUTTNER: (Inaudible). Perhaps if my learned friend would stick to the truth - - -

MR FRECKELTON: That's – that's offensive. My learned friend should not be denigrating in that way to junior counsel assisting, your Honour.

MR COLERIDGE: Your Honour, they were precisely the words that were used. I asked for some time, to discuss the matter with you. And I ask for some time to discuss the matter between counsel, and we were told that we could not be accommodated. So that's why I'm asking for some time to take instructions from your Honour.

THE CORONER: All right.

Well I'm going to take the afternoon adjournment, and everyone can have a cold drink during the break.

ADJOURNED

RESUMED

THE CORONER: You're standing, Mr Boe.

MR BOE: To attention, your Honour.

THE CORONER: Yes.

MR BOE: May I proceed?

THE CORONER: Yes.

MR BOE: Thank you, your Honour.

PAUL KIRKBY:

XXN BY MR BOE:

MR BOE: Sergeant, my name is Boe and I appear for the Walker, Lane and Robertson families. Do you know who they are in the context of this inquest?---I do.

Okay. I have three issues I want to pursue. I don't expect it to take very long, but there are some matters that I wish to clarify and some of the questions that Dr Dwyer asked you first. Do you have with you the case note use of force in relation to the matter that you reviewed concerning – I think his name is Walker, Christopher Walker? Christopher Walker, the one involving Constables Rolfe and Sykes. Did I heard you say earlier that you had listened to Constable Sykes' evidence yesterday?---I heard some.

Yes?---Not very much.

In the context of this incident, did you hear him explain that one of the reasons he thought in force use was appropriate what that there was some real time information been given to him by Com that there was a person who felt they were at danger of a man with a knife, or something to that effect?---I believe there some someone in the bathroom on the phone. Is that correct?

No, I'm asking you, do you recall Constable Sykes' evidence on this issue?---No.

Okay. My recollection is that one of the reasons why he thought that there was appropriate immediate force necessary was that the information was being relayed to him as they drove there and that there was a man with a knife – there was a man scared of being hurt with a knife and Sykes referred to things like, he could have been murdered and things like that?---Yes.

Do you understand the concept?---Yep, yep.

When you reviewed it, as part of your function, did you focus on the entering that

made it clear that the information that was available was that the complainant had locked himself in the bathroom?---And that's – I'll just have a read, if you don't mind?

It's in the first line?---And that's my – that's what I've written?

I don't (inaudible), but the – under the heading, "Use of force incident, narrative of incident", you have the name of the officers, on the first page. Sergeant, on the first page?---I think that's the wrong one.

That's not the right one?---No, I have it.

You've got it? You'll see the heading, "Use of force incident, narrative of incident". Do you see the heading?---What page are we on?

First page?---Sorry. Yep, yep.

First – you'll see "Use of force incident, narrative of incident". Do you see that?---Yes.

And you see a list of the names of the people attending?---Yes.

And then it says, "They attended 43 Van Senden", et cetera, "The complainant locked himself in the bathroom." Do you see that?---Yes.

And that's a narrative that you've written or something you've been told?---No, the use of force, your Honour, one of the people involved will do the use of force report. They will bring it up.

All right?---And they'll outline that. Then to get it to me, they will task it, or they will then create a task and then I will look at the – and that brings up the use of force.

Okay. So, those words, "The complainant locked himself in the bathroom" is something that had been reported by one of the people who were involved in that incident. Is that correct?---I imagine, yes. For – you can also get – we haven't got it here, the CAD report, which is as the Coms people are writing, it comes out in real time what is being reported to them on the phone, whether it's the call taker or the dispatcher.

All right. I'm being diffuse in my questioning, what I'm trying to get to is this, do you not think that that is a fact that goes to the urgency of entry or the force used upon entry when in fact the punitive victims are in fact safely locked in the bathroom?---If he's locked in the bathroom, it's not a safe room. You can break down the door.

Sure?---I think that's what you're saying. If he's in the bathroom, is he safe? Reasonably, but it's quite easy to break a door.

What I'm saying is, it's different to the idea that police are attending because a man with knife in house with punitive victim, it's slightly different, is it not, in terms of the

imminence of the threat that the complainant has informed police that he's actually locked in the bathroom?---But from my point of view, I would say he's not entirely safe.

I understand, all right. Can I just go to – I'm only going to take you to one of the text issues that you've been examined about and may I just make it clear for those who might be keen to get up, I'm not going to be addressing you on the inappropriateness or otherwise - - -?---Yep.

- - - of the language used in the text messages?---Yep.

I just want to interrogate with half a dozen questions to get precisely what in fact we can find out, that is, this court can find out, of what had occurred such that the words you used in that text. Do you understand?---Okay.

Okay. So, the text concerning - the 3 September 2019 text about – you know, “Sorry about the stress” exchange? You know the text message - - -?---Sorry, what page are we on?

THE CORONER: Page 2.

MR BOE: “Sorry about the stress caused by having - - -?---Okay, yeah, yep.

THE CORONER: Page 2, number 10.

MR BOE: So, I want to put to you four propositions about what the text from you objectively communicated, okay, Sergeant? I'm just going to raise them each with you - - -?---Yep.

- - - and you can adopt them or respond as you wish?---Okay.

First, in your text, you were apologising for having done something that you thought had caused Constable Rolfe stress. Correct?---Correct.

Second, whatever you did was a result of you “losing your shit” whilst performing your duties as a police officer. Correct?---Correct.

Third, you explained that you did whatever you did because you had enough because this was the second person “to press my button that night”. Correct?---Correct.

And fourth, you were commending Constable Rolfe for having “sorted it well”, that is, he had done something that you saw or heard that had somehow fixed what you had done. Correct?---Correct.

Now, in your answers yesterday, you were reluctant to go into detail and we've addressed that issue, and you've given a bit more detail today. I just want to get to the fact that at transcript 2390 yesterday, the sequence that you gave as to your

recollection was that you had tackled this person after pursuing you, in that the two of you had crashed into some sort of structure, correct?---Yeah, correct.

Today, you reversed the order, and suggested that he had crashed into the shed, and then you had grabbed him?---Yeah well I think I – yeah, yeah.

Which is the correct recollection?---Well it's kind of the same. He's running, he's crashed. I'm running, and I've gone straight into him.

I know that's what you said today?---Yeah.

I can read to you word for word what you said yesterday?---Yeah, yeah.

What you said yesterday - - - ?---Yeah.

- - - was that your recollection was, you tackled him - - - ?---Yeah.

- - - because you were in pursuit?---Yeah.

And that you both crashed into the shed?---Yeah.

There's a slight difference, and may not be (inaudible) - - - ?---Well yeah put - - -

- - - which one was it?---Bit – bit of both, in that the tackle was probably not like a rugby tackle or something like that but - - -

I'm not interested in the type of tackle - - - ?---Okay, which is - - -

- - - which order did it go? What was the sequence of the two physical interactions?---We're running, I've grabbed him, we've – we've gone into the whatever it was.

So you've tackled him first?---Yeah I did, yeah. Grabbed him, tackled him.

Now we understand now, that a) he was not charged, correct?---Correct.

And b), we have no means of capturing or seeing the body-worn video that was taken by Rolfe – Constable Rolfe?---Correct.

Just one question about that mechanism of storage and recharging. Is it the case that unless you place the camera into the charging device, there is no automatic download, is that correct?---I think you can pick it up from phones, or iPads - - -

Yes?---But I think – yeah, I think it downloads when you put it in the charging dock.

The way these things work is well-known to those who wear them, correct?---I imagine, yes.

You know how it functions?---Yeah, in a – yeah, not terribly – terribly technical way, but yeah.

No, it doesn't matter?---You put it in the dock and it downloads.

Sergeant, I'd imagine, if you believed it captured something that was very important in your interest, you would make sure you would do what is necessary, to make sure it's preserved, correct?---Yeah, if you go back to the station earlier in the day, you may put it in the dock. Otherwise, at the end of the shift, you would just dock it.

And if you have a suspicion that what is captured, may not be in your best interest, there are ways in which you can avoid it being viewed or preserved. You would know how to do that?---How to prevent it being viewed?

Yes, in terms of the steps you'd take. For example, it may well be, if there is no charge, or report, or incident file, you know, that if it's not saved by an active step, that in 12 months' time, it's lost forever?---Yeah, yeah but then you wouldn't be able to use your camera again.

Well that may be so. But you could always say, I need another camera?---Yeah, yeah I guess I could.

Anyone could. The one issue that I want to understand about this, is that your answer, as I understood it, in terms of what might have been captured, was that it may have been he might have been shouting out to cover up what you were shouting out?---I think that was it.

That was the answer you were giving?---Yeah.

May I suggest to you that there's a bit of a disconnect with that explanation, with the way in which you – he's described what he may be able to do. That is, if you face the camera away, we're not talking about audio, are we?---No, no.

We're talking about what is captured visually?---Yes, correct.

So what would facing the camera away do, to permit him shouting something that concealed the audio?---Nothing.

So your explanation doesn't actually explain what in fact he was saying, he was always ready to do, do you agree with that?---Can – sorry, can you say it again?

Your explanation to Dr Dwyer - - - ?---Yeah.

- - - of what you thought he might have been doing - - - ?---Yeah.

- - - to conceal whatever you were doing - - - ?---Yeah.

- - - mainly shouting at this person - - - ?---Yeah.

- - - was about the audio captured, correct?---Correct.

Whereas his explanation is “I’m always ready to make my camera face the other way and be a dramatic cunt for the film”?---Yeah.

Does it not suggest to you, that it’s what’s being captured, video, not audio, facing the camera away, does not lessen the capturing of audio?---No.

So you’re explanation doesn’t bear out, does it, as to what you thought he was talking about?---No I – no.

Do you accept that?---Yeah well it didn’t make sense to me either.

Well I’m suggesting it – your explanation doesn’t make sense here, unless what he was doing, was making sure, whatever you were physically doing - - - ?---Yeah.

- - - was not caught?---No.

All right. Now why would you be so concerned about verbally abusing somebody, that you were so stressed about it?---It’s out of character.

But this is a person whose not made a complaint?---Yeah.

You didn’t even arrest?---Yeah.

You’ve seen the other videos shown today by Dr Dwyer, where Kirstenfeldt is absolutely verbally speaking to that person, in your presence?---Yeah I – yeah.

Using explicatives, and being quite, you would think, inappropriate in language, and tone. See, I suggest to you that you’re not giving a candid account of what you in fact did, that was being avoided from being captured by film?---No, I think when we look at Constable Kirstenfeldt’s, and you consider it – consider that mine a lot worse than – than his.

All right. Can I just get to the next point. You’ve referred to the concept of what this person did, to warrant your verbal outrage, was he pressed your button. We all know what that means, right. How could he have possibly done anything, if all he had done was run away from you, and you tackled him, and brought him to a halt. What button was he pressing?---That was it I think. Probably trying to talk to him, getting ignored. Having to follow him. Getting ignored, starting to run. Having to run after him, that pressed my button.

What pressed your button was that he had made you chase him, is that correct?---I imagine.

What was – that person was Indigenous, wasn’t he?---I - - -

Visually to you?---I – I – yes, I – yeah.

And the person who had earlier pressed your button that night, was that person Indigenous?---I – I have no idea.

You have no idea, because you don't remember the incident at all?---I don't know what the incident was. I - - -

Well it happened the same night, didn't it?---Sorry?

It happened the same night, didn't it?---I – I don't know, your Honour. I don't know what the other incident was. I can't remember.

All right. Now in your – in the reply from Constable Rolfe, can I just say, there are also four things that he objectively communicated. And I ask you to comment on that. The first was, that he indicated that there was "Literally no stress about it." That is, he sought to reassure you, that he was not greatly affected by what you had done, and what he had done, correct?---Correct.

Second, he – he said, he is "All for that shit." Which could either be a reference to what you had done, or what he had done. And may I suggest it was probably the latter?---You – sorry, you could suggest what?

That there are two inferences to be drawn from he's referring to, that is "All for that shit"?---Yep.

Do you see that?---Yep.

Could be a reference to he was all for what you had done - - - ?---Yeah.

- - - or all for what he had done. They're the two possible inferences?---No, I'm going to go with what I had done.

What you had done?---Yep.

He was all for berating a punitive arrestee, is that - - - ?---An arrestee, yes.

Not for "All for that shit" is doing what he had done, which is turned the camera off?---"I'm all for" – oh I – you – sorry, you lost me there.

We're asking what your take is, that it was the first of two inferences, is that correct?---Say again?

Your take is, that what he was referring to, was what you had done, that is berated that person?---Correct.

Third, he was telling you that he had placed you under the same situation "More than once before." You see that?---Yep, yep.

You accept that that's what he's communicating?---Yep.

The same situation that he was referring to, did you understand it to be that you had been doing something, which - - -

THE CORONER: No, it's the other way around.

MR BOE: It's the other way around, yes.

THE CORONER: "I've done the same thing to you more than once before", suggests that he has behaved in front of you, in a similar way to the way you had behaved?---Correct, that's how it - yeah, that's how it reads.

MR BOE: All right, thank you, your Honour, thank you.

The fourth thing is, quote, "He was always ready to turn his body-worn video away so as not to record what you had done and act in a dramatic way so as to distort what the recording - or non-recording of what you had done". That's what he was communicating?---Correct.

All right, I will move on from that. I just want to get to - - -

THE CORONER: Can I just ask this. Part of Constable Rolfe sorting it well, in your mind, included the fact that he had altered in some way the video recording so as to misrepresent what was occurring?---No, your Honour. How I saw that it's - he's taken the chap away, that's all that I saw there.

MR BOE: But he's not saying that in the text, is it?---Yeah, it is. That's how I saw it.

Well, he doesn't use that, "I took the chap away" - - -?---No, I - that - but - - -

(Inaudible) start to turn the video - - -?---No, but I've said - my response was, "You sorted it well."

Did he sort it well by preventing you from assaulting this man - restrained you from losing your shit?---There's no assault, I was just - talking to him.

I will just go to one issue about the 17 October text that you were last taken to by Dr Dwyer, about the issue concerning the bicycle and 301. You know the incident I'm talking about?---Yes. 21.

Was that person who made a complaint an Indigenous person as well?---Yes, well, the person on the bicycle was - was Indigenous.

On the bicycle and who had made the complaint, correct? Correct?---He would've talked to NAAJA and NAAJA would've made the complaint.

Okay. The - did you ever take up the suggestion - I heard yesterday that you'd been on stress leave for several months until six weeks ago?---Correct.

Are you still under any investigation for any matter?---For any matter?

Yes?---I don't believe so, no.

Now, I have got two more matters and they won't take long. My first is this. You mentioned in your statement a number of things. Can I just first clarify that in par 24 you make the point of saying that you made and typed the statement "by myself" or "myself" at Palmerston on 19 August, correct?---Correct.

And in preparing it were you responding to 11 questions that had been sent to you by the investigators?---That's correct. Questions from her Honour or framed - - -

From (inaudible) staff - - -?---Yeah, from - someone gave them some - - -

Okay. So I want to get into that because the question that Dr Dwyer, if I may say, carefully took you through was the line in par 22 about "a developing negative attitude"?---Sorry, am I supposed to have a copy or?

Well, you can have one if you like?---Well, if you 're talking to me about - - -

I've got a printout if you want to look at it. I won't - I'll get you to read it out if it's easier for you.

A PERSON UNKNOWN: I think he might have his statement.

THE CORONER: Have you got a copy - still got a copy of your statement?
---I haven't got a copy, your Honour.

THE CORONER: Okay. So he would like a copy of his statement as well.

MR BOE: I will keep going whilst the document comes up.

THE CORONER: Sure.

MR BOE: What I'm getting into is this, in par 22, when you use the language "negative attitudes" you were responding to question 11 of that - well, the highlighted question, what is that?---Sorry, ten.

Ten. Would you mind reading out that question please? Reading out aloud so we can all hear?---You want me to read it?

Yes please. I just don't have a copy in front of me, I gave you my copy?---Okay. "Whether you think that you or members of the police force developed negative attitudes to Aboriginal members of the community that may have impact on your work. If so whether you think additional training or other supports would help".

What I want to focus upon is that question of striving on on - not just whether or not you had negative attitudes, but whether those negative attitudes may have impact on your work. You understood that, to get the question?---Yes, correct.

So when you answered that in par 22 with, if I may say, startling candour, that you did have negative attitudes, you meant to say that you did hold negative attitudes which may impact upon your work, is that fair?---I don't - I can't really say what I - what I meant to say because what I said was obviously what I wrote, so I don't know. Maybe I - - -

Well, you were responding to that question?---Yes.

All right, I'll leave it that for now.

THE CORONER: Do you think that the negative attitudes that you've referred to impacted on the way you carried out your duties?---I think they must have and I think I may have said yesterday just the continual day in day out every job, just the drunkenness, working on the POSI, that was particularly hard but yes, I - yes, it was - you did get worn down and so that's - - -

So one of the things you've frankly admitted is - I don't know if it's because of your negative attitudes or being worn down, but you frankly admitted that you've used inappropriate language and a lot of swear words around the police station?---Yes.

Do you think that was as a response to negative attitudes that you developed?
---I think more so worn down.

Okay?---If I look at myself as when I first stated with the police, I don't think I swore. I don't think I even - maybe I drank but not very much, and things like that.

So, looking back now, you've said that you did develop negative attitude. How did that affect the way you carried out your duties?---Whether it's that you don't have a lot of empathy or sympathy to - in the picking up of drunken people and things like that and it's "you again" type thing, and it's - you probably don't have - I have empathy with mental health but not with drunkenness, if that makes sense?

MR BOE: May I ask this, Sergeant? I am not going to have a debate with you about race theories and matters of racism?---Mm mm.

Do you understand? So I'm not going to call you to account on these things here. What I want to get to is the matter her Honour was driving at?---Yeh.

You gave an answer, with respect, which was pretty revealing, that is you have a problem with these people that live in the communities and they come into Alice and drink and behave badly but you don't have a problem with people that might have mental health issues. Is that what you just said?---Yes, I have a sort spot for mental health.

Yes, I see. What I want you to consider with this, because you make this distinction in par 23 that you're looking at what they did from what they are. So you're removing the attribute of Indigenousness - or the issue that has worn you down from which you have developed negative attitudes, by your experiences of what you see them doing. Is that a fair encapsulation of how you are trying to explain yourself?---Yes, the actions that have been done as opposed to the people doing them.

I understand. And but you've - you understand that we have to do this in the context that almost 99 percent of the people you will be policing are, in fact Indigenous, do you understand?---Yes.

That's how we're viewing your thoughts. Do you understand?---Yes.

So you're saying that you developed negative attitudes (about Indigenous people)?
---Yeah.

Who are behaving in a way that had worn you down and it affected the way in which you undertake police work. Is that fair?---The actions have worn me down, not the - - -

(Inaudible) people confronted with their actions?---Think - yes, correct.

Now, the issue that I want to raise with you is you, in your answer to the second question is whether or not any training would assist you, you deferred the responsibility to government agencies who are more responsible, I think you said yesterday, with health, education - these people have kids and they don't go to school, do you remember that answer?---Yes. Yes. I don't think I deferred - like I didn't defer my role, because I'm still going to do my role. But I think there are other people who should step up and there were - sorry.

Sorry, you keep going. The issue that's arising in your examination is that, besides what you have said in your statement and beside what you have said in tolerated and text exchanges is that there is conduct that we've seen of yours, policing conduct, not just what you do in your engagement, but what you review about what others are doing which may be the subject of submissions on which we say, we may say, that you have failed in your duty. Do you understand Dr Dwyer is putting you - not verbally, but she - - -?---Yeah, I remember that.

- - - was putting those issues to you - - -?---Yep.

- - - to fairly respond to. Do you understand?---Yep.

And one of the things that you said at the beginning of your statement was that there had been fairly limited cross-cultural information given to you within the police service?---Whereabouts are we?

You mentioned some - in par 18, you talked about a travel to Jabiru?---Yep.

And a talk being delivered by an Irish chap?---Yep.

Do you remember that?---Yep.

You would accept that that's fairly inadequate assistance to you to have understanding of the people who you will be policing almost 99 percent of the time. You would accept that as a proposition, wouldn't you?---I would go further than say fairly inadequate, it's woefully inadequate.

Yes. And so, what we're here is – we understand that the Commissioner is wanting to listen and be imaginative about how police officers conduct themselves in their policing, okay? Now, I want to take you to a document which is in part of brief, in fact, is 12-4 and it's at page 56. I think – thank you. Thank you so much. You'll see up the top there, and I'll give you the context of this document in a moment if you need it, you'll see there that there's a heading, "The session time, five minutes; The subject matter, death, sorry business. Participant guide", et cetera. Do you see that?---Yep.

And you will see, and you can just read it to yourself, the information there being given about the concept of people passing away in the community and what sorry business can amount to. And over the next page – I'll wait until you're finished that page?---Yep.

You've read that page? Have you ever read that sort of information ever before?---No. No, I remember at Papunya, attending Papunya and there was a death and I was quite concerned because I didn't know what to do - - -

All right?-- - - - in regard to cultural.

Okay, thank you for that candour. Are you saying, you've never read that document before?---No, never.

And you've never been given information of that kind before. Correct?---No, I don't know where you said you got that, but that's probably there for me to get, but I've never read it.

Well, I just want to be clear about what you didn't have?---Okay, yep.

One, you're never read that document; and two, you've never been given that sort of information. Correct?---Correct.

And just for the record, it's the "Policing between Cultures" document produced by the Northern Territory Police Force. I'm told by the counsel assisting team that this is the version as of 11 May 2016. Do you understand?---This was?

Yes?---Yep.

Now, the next page, if I could just go to it briefly. You'll see how there is information there about observations made by those who wrote this about the way in which Indigenous people may mourn and how it may or may not be the same as how non-Aboriginal people may choose to mourn. Do you see that?---Yep.

You've never seen anything like that before?---No, probably – I don't know if the correct term is learning out in the field.

Yes, well learning out in the field often - - -?---But, no, I haven't read this.

The evidence we've heard is sometimes that when there's funerals, you know, they might riot because they're really loud and they carry on. That's what you understand it?---No, I've been at funerals and sorry – well, not at – but, you know around and heard the wailing and that, people sitting out – and sorry camps and - - -

All right?---Sometimes going and sitting with them.

All right. When you answer the question in par 22 that you didn't need to learn anymore, do you want to revise that thought? Because do you not think that having some accurate information, not just simply what's in that police manual, some accurate information of cultural issues in the communities that you police is something that would greatly benefit in effecting your perspective on these people with whom you've developed negative attitudes?---Yeah, I think you've gone a lot deeper than I did in my response. I think, yeah, I'm all for further education and – but it's just the drunk people in town.

I see, all right. Like drunk Aboriginal people in town?---Well, I don't care if they're drunk - - -

It's true?--- - - - anyone, but yeah, there's a lot of drunken Aboriginal people in town, yeah.

You see, when you – the questions that were asked of you fairly by Dr Dwyer yesterday and I think her Honour that sometimes there may be a connection between alcoholism and traumas?---Yep.

You have sympathy or empathy with people with mental illnesses?---Correct, yep.

A soft spot? Could you not even conceive the possibility that some of the behaviour that you found so difficult is the product of significant mental health and trauma issues?---Yep. I will – and you hear a lot of people; things have happened in their life and they start drinking. And so, I see that.

You see - - -?---I'm not sure if that's where you're coming from.

No, I'm not asking - - -?---But I see that. And some people turn to alcohol and some people turn to other things.

I'm just driving at that answer to the question - - -?---Yes.

- - - that you thought no further help from training would help you. Surely you concede now from what we've been talking about that - - -?---I think, without being flippant, that was maybe - - -

May I just finish the question?---Sorry?

May I finish the question?---Sorry, I thought you'd finished.

Which is – no. From what we've been talking about - - -?---Yep.

- - - do you not think there's a lot more for you to understand about the people you are policing for you to undertake those duties in an appropriate way, mindful of the circumstances in which they find themselves being policed?---I agree with you.

Thank you?---Yep.

Because one of the unfortunate inferences from some of the text messages and that's a submission others may make, is that you've actually developed not just a negative attitude, but rather, you think lesser of them because of their behaviour?---Of? Of the drunk people?

Well, the people who are drunk, yes. You think lesser of them. You've developed a negative view of them and you - - -?---Yep.

- - - think lesser of them because of their behaviour?---I think that's probably the case. I guess I get sick of just drunk people.

Because you – sorry, keep going?---Sorry, just sick of drunk people.

Yes. You see, then you added in your answers, "It is wrong to consider people like Walker, first and foremost and above all else, Indigenous." Do you see that in your statement?---Yeah, I'm just trying to find it. What number?

I've lost my copy. I think it's in the last par 23. "Finally, I would say that it is wrong to consider people like Walker, first and foremost and above all else, Indigenous"?---Yep.

What do you mean by that?---I think to be held accountable for one's actions, and not to be – and I'm not going to articulate well, to be held accountable for the thing that you did, or the things you have done as opposed to being considered – despite the fact of being Aboriginal or being European or what have you, or Europe or whatever, that you're considered for what you've done.

But just the language you used, which you typed yourself, is that it is wrong to consider people. And you're actually making a positive assessment of having a primary regard to the fact that he's Indigenous in the way in which he was

policed?---No, I think where I was coming from there, your Honour, is just holding people to account for their actions. I said I wasn't going to articulate it, well, but as opposed to, you know, like these are Indigenous people, or these are what – what have you. It's like, this is an offender, because he's done this, or these drunk people are – or they're PC'd because they're drunk, and that's kind of where I was coming at there.

I'll just be quick, there's only three more questions I want to get to. But one thing I noticed in your statement, is at no time do you use the word "Kumanjayi" in your statement. Rather, you refer to him as "Arnold Walker", or "Walker." Now was that a – a considered - - - ?---I think that's - - -

- - - decision not to refer to Kumanjayi?---No I think that's just the way – like – did I refer to him as Kumanjayi at the start?

No?---Usually I refer to people, just as their surnames.

Well you've read from that passage you read from the manual, that the name of a deceased is now not to be used after their passing. You saw that didn't you?---Yeah, I saw that, yes.

And you see that as being something recognised by police as an important mark of respect?---Yep.

But that's something you didn't show in your statement?---No I didn't, no.

You say you did that unwittingly?---I thought initially it was – yeah, but - - -

Okay. Three final questions. In so far as the impact on your policing work, did you start doing things, that you had regretted, such as do and say things, that do not reflect, who in fact you are as a person, and as a father?---Sorry is that your question, or was that one of - - -

My question (inaudible)?---Sorry, sorry, I didn't – sorry.

No that's okay. This is difficult for both of us I'm sure. You made a reference to earlier saying that the person you started in the service in the Territory, is not the person you are now seeing, being revealed, or something like that. Do you remember - - - ?---That I have changed?

Yes?---Yeah I – yeah.

And do you think that the – whatever the reason for this negative impact, that you have started to do things, that you had regretted? I think you've conceded that a couple of times today – today and yesterday. Do you agree with that?---Say that bit again.

That you regretted sending some of those texts, correct?---Yes, yes.

You regretted saying some things, correct?---I did.

You regretted not doing that you should have done, correct?---Correct.

Now in light of these negative attitudes, and given the conclusions that you've come to in today's evidence. And given that most of the people you will police in the future, are going to be Indigenous people, who are going to be behaving in a way that you found difficult. Do you not think it's time for you to make a decision to stop undertaking this sort of work?---No.

MR ROBSON: Well I object to that, your Honour. That's just an unnecessary question.

MR BOE: Why is that unnecessary?

MR ROBSON: Why is it relevant?

MR BOE: Well we're going forward, and looking at, making sure, that the police who are servicing these communities, have the right attitudes, the right respect, the right behaviour, in relation to policing. And part of it has been, with respect, that this witness's evidence is, he came here because of the money. Which is fair. We all do that. Having experienced these matters, and having been shown what he has been doing, is it not time for individual police officers to reflect on whether or not they should be doing this sort of work, if they're not willing to be further trained. If they're not willing to be educated about how the local community wish to be policed.

THE CORONER: Are you willing to receive further training?---I think I said yesterday, I hadn't heard of the Coniston Massacre. And it was brought up in here, so Google's not a particularly good search, but – or research, but I went in there and – so I'm always willing.

Are you –

I'm going to allow the question, Mr Boe.

MR BOE: Thank you, your Honour.

Do you not – do you not think, that given all we've heard what you've done and said, and your reflections, and given if I may say, a degree of (inaudible) in your position, is it not perhaps time for you to reconsider, whether you should be doing policing, in the Territory?---No.

No.

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

THE CORONER: Mr Mullins.

MR MULLINS: One question, your Honour.

XXN BY MR MULLINS:

MR MULLINS: My name is Mullins?---Good afternoon.

I appear on behalf of the Brown family. I just have one question. Do you think that your lack of empathy toward Indigenous people who are intoxicated, spills over to other Indigenous people, who may not be intoxicated?---No, I don't think it does.

And then a second question. How do you distinguish between the two? From a - - - ?---Between a drunk person and a non-drunk person?

Well when you're approaching a group of people, where some might be drunk, and some might not be drunk, how do you distinguish between them?---You find out pretty quickly. Yeah.

Thank you, your Honour.

THE CORONER: Mr Espie.

XXN BY MR ESPIE:

MR ESPIE: Sergeant, my name's Espie, and I appear on behalf of NAAJA. You were questioned about some comments, and some – some advice, or consoling of your friend, and your junior officer, Mr Rolfe, and his application to the TRG, where your text messages have been read out, referring to, “Blacks, chicks, gays, lazy fucks, and then Zach.” I just want to clarify your – some of your answers to before, or some of that discussion. You said something along the lines of people should be given those positions, or promotions, based on merit. You didn't think prioritising diversity was – had any merit. Is that – was that your answer?---I – I believe so.

Right. Just perhaps some other issues that may be – see if you agree with whether these things are – go to someone's merit as a police officer, and perhaps leadership given. You agree, you've failed in leadership on a number of occasions, but following process, that would be something worthy of merit, and important in a leadership role, or a promotion?---Exactly, true.

Some passion and insight?---Compassion?

Yes?---For who?

Well for the people you work with and - - - ?---The policemen or?

For the community?---Community, yep, yep, compassion - - -

And your colleagues, yes?---Compassion, yeah.

Yes?---Yeah.

Insight into the – where you're working, and the people you work with?---Correct, yeah.

The community you work with. Integrity in your evidence, collating evidence, and maintaining that evidence?---Yeah.

Being thorough?---Being thorough, yeah.

Having an adequate memory and recollection? That's important when you give evidence, isn't it? Which as an officer, you often have to do, give evidence in court, and have a good recollection of what's happened, and events?---Through good note taking, and collection of evidence, and – yeah.

All right?---Sorry I was a bit confused about the memory.

Right, a lot of things - - - ?---Yeah.

- - - giving a recollection - - - ?---Yeah.

- - - because you know we've got notes and text messages - - - ?---Yeah.

- - - and you have to remember a lot of that. There's a lot of things you haven't remembered, today, and yesterday. And remembering to turn your body-worn footage on, that's important?---I've – I've actually got in trouble for that quite a few times.

Yes, so something of merit, and leadership, and being worthy of promotion, that would include having a good memory, and ability to recall things accurately?---Yeah, a good memory's good.

The Irish chap, what did he teach you, is there anything (inaudible)?---I – I don't know. I didn't – I did say yesterday, I don't want to run him down, because he might have said some good stuff.

But you don't remember it?---But I don't - - -

None of it stuck in your head?---No it was 10 years ago.

All right. You didn't learn about massacres, Coniston Massacre, you've only just recently learned about that?---No, that was only recently through the Coronial, that I went – I went and had a look to see what it was.

Until today, you haven't really had much of an understanding about things like sorry business, and cultural practices around death?---No, I'd say incorrect. My time in communities, I've gone – and I had said not very long ago, that I've sat and – at

sorry camp and – and like I’ve heard the wailing, and obviously dealing with the death of Aboriginal folk out in communities, and – and the – the emotion, and the wailing and - - -

All right. When it comes to having an insight into your time in Kintore, you couldn’t really understand why people had all these houses, and were sleeping outside?---It was cooler. Yeah.

You’ve just – you viewed the place as filthy?---I – when I first got there, I thought it was.

“Blacks, chicks, gays” etcetera. Do you think may be black people, Aboriginal people, might have a bit more insight into some of the historical things such as a Coniston Massacre?---We were talking about the TRG though - - -

The cultural issues that - - -?--- - - - TRG though, like in its – and it was joke-ish. Inappropriate, I’ll accept that now, and I don’t think I did before. But - - -

I’m not asking for an excuse about the content, I’m just asking your opinion on whether you think black or Aboriginal people might have some more insight into some of the things that you didn’t seem to remember from the Irish chap 10 years ago?---Well, if an Aboriginal chap was going for the TRG and he met the qualifying standards.

All right?---Like I struggle there – like I – yeah, I know what you mean, but like putting the two together is – I’m not quite - - -

I mean essentially, you were asked a number of questions yesterday. Your insights into Aboriginal people seem to consist of, they’re filthy, including - - -?---I don’t think I ever said Aboriginal people are filthy. I’m pretty sure I never said that.

Right. You were asked some insights into things like poverty and you quickly jumped on, well I don’t think poverty’s an issue. Look at the green cans. It’s all about alcohol. It’s all about, and I’ll quote what you said yesterday, “They’ve all got kids. Their kids aren’t going to school.”?---That was the folk coming into town - - -

Right?--- - - - for the purposes of drinking alcohol.

Some of your sights are, Aboriginal people are filthy alcoholics?---No, I never said Aboriginal people are filthy.

Well, they come from filthy communities like Kintore?---No, that Kintore was full – like there was rubbish everywhere.

Any compassion in any of those comments?

MR ROBSON: What’s the relevance of this, your Honour?---Which comments?

MR ESPIE: It goes towards his comments, your Honour, about leadership and merit and that's entirely relevant to the culture moving forward of the police force, and concerns about systemic racism.

THE CORONER: I don't know that his reflection on whether his answers showed compassion is going to assist me, Mr Espie.

MR ESPIE: All right, I won't push it, your Honour.

Some other things that are important in your role as a sergeant, and we've heard evidence, but perhaps to generalise it, some concerns about your practises and your discussions about Mr Rolfe's practises around proper integrity of evidence, including body-worn footage and remembering to turn it on and joking about potentially fabricating or manipulating the use of them by turning away or not having them aimed in the proper direction, et cetera. Do you think that's again reflecting on your comments of failed leadership, do you think that those are concerning aspects?

MR ROBSON: Well, I object to that. That's a matter for submission and others to form opinions on. He's given evidence ad nauseum on these matters.

THE CORONER: I think he's already conceded - - -

MR ESPIE: Yes, your Honour.

THE CORONER: - - - it's a failure on his part. That would be fair enough, wouldn't it, Sergeant? You've conceded - - -?---Sorry, ma'am.

- - - that's a failing on your part in relation to body-worn video and leadership in relation to body-worn video?---I do. I think I said that earlier, sorry.

MR ESPIE: All right. Just perhaps some observations on how we can improve that use of body-worn footage. Would it be beneficial if there was some way of having body-worn footage not able to be turned on and off, but then simply being able to be recorded consistently throughout a shift?---It would be, until the officer went to the toilet or had a private conversation.

All right?---I see what you mean, but if they're in the station and the muster room is their area where they can talk.]

Okay, perhaps one more question on that, do you think it would be beneficial to have some sort of 360-degree view, perhaps cameras on your back as well as well?---I don't know. Is that a proper question or?

Yes, it is. We've heard concerns about people turning away?---I don't know.

You don't know? You've been asked some questions about – I think this was in October, some text messages that referred to yourself and Mr Rolfe commenting on taking stress leave, et cetera and you found it frustrating that you think some people

perhaps fake mental illness to get time off?---No, I said not necessarily mental illness, I said some injuries.

All right?---And I don't think it's widespread, but I think people have done it.

All right, including faking stress leave in general, being stressed or not being able to cope?---I don't know.

You don't recall saying something along those lines - - -?---This morning?

- - - to counsel assisting?---I don't know. If that's there, then I said it, then I said it.

All right. Issues of showing leadership. Rather than joking about these things, were you aware that Mr Rolfe in fact had – or was taking antidepressant medication? We've heard some evidence of that?---No.

Are you aware that we've heard some evidence that he was talking to other colleagues about perhaps some things going on in his head, for want of a better - - -?---No, no. I heard that yesterday on the – when I was watching.

So, as far as your leadership as his – one of his superiors, do you think you've let him down in that regard, that perhaps he didn't feel able to come to you and discuss any potential issues going on in his head or of his need to use antidepressants, et cetera?---Maybe I did, maybe I wasn't as open as I should have been.

Well, it's not about being open?---Well, he has to feel that he can come to me, that he has the confidence to come to me, that I'm the right person to come to.

All right?---Maybe, he went to someone else. I don't - - -

If you're joking about people that fake illnesses or injuries, he's not going to feel confident to come to you about those sorts of things, is he?---He was the person that was joking with me about it.

You didn't suggest that he should take those things seriously, did you?---No, not in that text exchange.

No. And that was 17 October which is less than a month before he had to - - -

MR ROBSON: Your Honour.

THE CORONER: We know the dates.

MR ESPIE: Yes.

You've given some evidence about – you've seen some footage of issues involving use of force, Sergeant?---Sorry, say again?

You've given evidence observing some use of force - - -?---The video?

- - - instances? Yes?---Yeah, yep.

You've approved people's use of force as a sergeant?---Correct, yep.

You approve their case notes, sorry. Just some other insights, the incident involving – I believe it was Christopher Walker, you stand by the fact that when police – well when Constable Rolfe entered that room, the person in the footage didn't comply, I think you said?---Didn't comply and what sorry?

Didn't comply to get on the ground?---Yep.

All right. You described – I think you were describing some training, you were using the words "shouting, dominating and disorientating"?---Correct.

Is that part of your training as a way of entering?---I think they may have changed it now, the – I'm not a tactical operator or anything like that but. There are different situations, your Honour, where you would go in as quietly as you can or where you would go in as quickly and dynamically as you can. And that's – the footage that we saw before, that's – that was that situation there, but not – it's not one fits all.

All right. Some alternatives – I'm not specifically talking about that incident, but alternate uses of force which you haven't discussed would include things like the use of tasers or capsicum spray, pepper spray. If someone has cognitive issues, mental health issues, drug psychosis, they're not necessarily going to comply straight away, are they, in a situation where force may be required?---No, no that's correct.

In your – has your training given you any insights into that, about how to – to deal with people with any other sort of cognitive issues, or issues that may affect their response?---No a little bit tricky, like if someone who's cognitively impaired is standing with a knife, threatening, it's – you're going to deal with that person in exactly the same way. It's going – you're going to subdue that person.

Right. You'd shoot them?---Sorry?

You'd shoot them?---I said, "subdue."

Well, you were asked to give consideration on any recommendations to her Honour?---Yeah.

I think the question was "Any recommendations they might make with respect of preventing future deaths." And I think you've given your answer. You've got it in front of you, in par 23. Stating that, "If someone attacks seriously assaults, or attempts to stab a member of the police, the chances of getting shot are probable, and not just possible"?---Yeah, that's what I wrote.

That includes – would you say includes someone who has cognitive issues, or any other issues that may affect their response, you'd still - - - ?---If someone with cognitive impairment is stabbing someone, and this is just me. And the fact that they're cognitively impaired, doesn't come into it.

Right, would it - - - ?---And if – if I have to shoot that person, to protect that person, then the fact that they're cognitively impaired doesn't come into it.

If you had a bit more time, I'm not talking about Mr Walker. If you had time, and you had some awareness of that, would it change the way you might respond to that person?---Is he still stabbing her?

If you had concerns that they may potentially pick up a weapon, or in the case of Kumanjaya Walker, (inaudible) - - -?---Each – each situation is different and - - -

Right, but I'm talking about if you've got time - - - ?---If there's not an imminent threat to - - -

- - - when you've got to plan – is the question (inaudible)?---Well that would be in your – your planning, when – if you were doing – being front – are you talking about me being front line GD's, or are you talking about - - -

In general?---Sorry?

Just in general - - -

THE CORONER: He's just asking you, is that a factor that come – that you would take into account in determining how to deal with a matter?---If you had time, your Honour. And I think someone brought up and said SMEAC. And that's situation, mission, action, just what the plan – you can do it in your head. You can do it – write it on the bonnet of a car. If you had time – if you had time, you would take in as much as you can.

MR ESPIE: All right.

Would that include talking to people? If you had the opportunity?---It's – yeah, the intel gathering you mean?

No - - - ?---Yep.

- - - talking to someone who's aggressive and hostile?---Well it depends what they're doing. Like if your – if it's me and you, and you can't get to me because this desks in the way, I'd be talking to you.

All right. You've given evidence that you're not really interested – or community policing, remote policing's not something for you?---No, no, I enjoy – I did 18 months, all up, and I – I think I would say I loved just about all of it, but no it's not for me.

All right?---I think – there's some people who choose to go bush, and they love bush. There's some people who – who don't want to go, and – or go remote, sorry.

You would understand that community policing is something that officers – other officers have described in this process, in this inquest, as a lot about building relationships and trust with the people in the community?---Correct, yep.

Do you think that would also help when you're confronted with people that may be acting hostile?---If you've got the time, you would try to build up that trust. I'm not quite sure how working in a community and having someone may be thinking about attacking you or something, I'm not sure.

Do you think that is perhaps why it's important – or maybe it's valued by other members of the police force as a valued quality to learn community policing, before going into you know, a dangerous situation of working for the TRG?---Can – sorry, can you say that again?

MR ROBSON: Well again, I just – question the (inaudible) of this your Honour.

THE CORONER: Yes, I don't really think it's in his area of expertise.

MR ESPIE: I'm referring to his comments, your Honour - - -

THE CORONER: Sure.

MR ESPIE: - - - but I can – I withdraw that.

THE CORONER: You've very little time left, Mr Espie.

MR ESPIE: Yes, your Honour.

Other than the fact that it's highly probable that people get shot when confronting police officers with a knife, or trying to stab them, is there any other insights you'd like to share? That's just my final question?---No, my – it was do I have any suggestions, and sometimes I think people are confused as to what police do, or what they can do. That may be – and not Aboriginal, but talking all across Australia, all different walks of life, and if you attack a policeman, if you attack – well basically attack anyone, and there's a policeman there, that the chances are, you could get shot. That you – that you can't attack a policeman, if that policeman is fearing for his or her life.

That's more – essentially, as it says in your statement, you're suggesting it's more than just a chance that it's quite probable?---If you – yeah, if you attack a policeman with a knife, or with a – whatever, pair of scissors, that the chances are probable that you'll get shot.

Are you open, Sergeant, to learning other safer ways of dealing with people, to avoid the need to probably shoot them?---What - - -

MR ROBSON: Well I object to this. I don't think the Sergeant's been a situation where he's shot somebody, and whether he's open to new ways of dealing with situations, it's – just it's completely irrelevant.

THE CORONER: I – I'm not going to allow the question.

MR ESPIE: I withdraw the question, your Honour. Nothing further.

THE CORONER: Yes, Mr McMahon.

MR MCMAHON AC SC: Thank you, your Honour.

XXN BYMR MCMAHON:

MR MCMAHON: Sergeant my name's McMahon, and appear for the Parumpurru Committee of Yuendumu, which is a justice committee. Have you come across that while you've been watching this inquest?---Yes sir.

Okay. Just looking at your last answer, or listening to your last answer, you said that some people can be confused about what police do. There's no confusion is there, that police have the power to, for instance, arrest a citizen, correct?---Correct.

To pin a citizen to the ground if necessary, correct?---If necessary.

There's no confusion that police have the power to lock people into paddy wagons, like we've seen on the video, or to lock them in cells. There's no confusion about those powers, it's well understood. Do you agree with that?---Correct, yeah.

Police have the power to take people from their homes, put them in the police station, put them in a cell. No confusion about that?---No.

Pick them up off the street, and deprive them of their freedom. There's no confusion about that?---Pick them up, that's off the street, for?

Arrest someone on the street, and take them to the station - - - ?---For – for an - - -

- - - and deprive them of their freedom?---For of an offence, you mean?

Yes?---Yeah, yeah.

There's no confusion that in certain circumstances, police have the power to use batons to strike a person, if that's necessary, correct?---If necessary and – yes.

There's no confusion about that is there?---What?

There's no confusion that police have the power to use Taser guns if they need to, to resolve a situation, or a dangerous situation?---Well there's no confusion with me, but I can't.

And in fact, as you well know, police, if necessary, also have the power to use lethal force to actually kill somebody, if it's necessary, in the circumstances that they're confronted with?---Correct.

You'd agree that these are a unique and extraordinary powers, which the community entrusts the police with?---Correct.

Do you agree that people who hold racist attitudes, about Aboriginal people, should not be given these powers to police Aboriginal people?---I – I would say yes to that.

You've been taken to a number of text messages. And I just want to switch from text to APP. Do you have APPs on your phone?---APPs?

An APP, A-P-P, you know what an APP is on your phone - - - ?---Yeah, yeah, yep, yep.

Social media APP?---Yep.

Were you communicating between – during the year of 2019, were you communicating with Constable Rolfe on an APP?---Like text - - -

It's a yes or no?---Text – I don't know what you mean.

Communicating, sending messages, sending texts, sending pictures?---I don't know about pictures.

Just texts?---I don't know - yes, just yeah, sending texts only.

What was the app you were using?---I don't know. I don't know what it's called.

Pardon?---Hang on.

Yes, have a look on your phone?---Messenger.

Messenger. Have other police looked at your phone to see what messages you've sent to Constable Rolfe in the year 2019 on that app?---No, I think Constable Rolfe's phone got looked at.

Pardon?---I think Constable Rolfe's got looked at.

Between the arrest of Constable Rolfe and now have you deleted messages that you and he had exchanged from your phone?---No, they're all on there.

Between the arrest of Constable Rolfe and now did you delete other messages - messages that you've sent to other police on your phone?---No, I don't believe so.

And no police have seized your phone to have a look at it?---No.

Okay. When you spoke about the video yesterday that you were shown concerning an arrest on - is it called Anzac Hill?---Yes, yes.

Anzac Hill, you were shown a video and you were asked a lot of questions about the camera being on and off - - -?---Yep.

- - - and you gave answers about lights flashing and not flashing and so on?---Yes.

And then as I understood it, when you were shown the video and asked questions by counsel assisting it seemed that at the end of that video there was a collection of people and vehicles in the dark and that you seemed to say something to the effect that you were explaining that you had your body-worn video on?---Correct.

And Dr Dwyer asked you some questions about that, "Why did you do that"?---Yes.

Because it seems that - correct me if I'm wrong, it seems that you had turned it on some time shortly prior to that?---I - I don't know. We might have to look at it. I don't know what the period of time was.

But you agree that you were standing there with the vehicles and the people, your video camera - your body-worn video was on and then Dr Dwyer said, "Why did you do that?" As in turn it on and you said, "Sometimes people come along and say things, like it might be inappropriate at that time so you just say, "Camera is on". That's your evidence?---Yeah that's - yeah, I'll quite often say that.

So in circumstances where there's just been an arrest and a chase and quite a lot of drama, what is the point of turning - of telling people that the camera is on? ---Probably because I just turned it on or it had been on for however long - I don't know.

What is the point of telling other people that the camera is on?---Just so they're aware that it's being recorded.

Why does that matter?---Just so someone doesn't say something silly.

Like what? Like a racist comment?---Like something silly. Just - - -

Well, there's nothing wrong with saying something silly. "Bananas are yellow and I hope you slip on one" is a silly comment but no-one cares if it's on your body-worn video. Isn't it the case that you're worried that someone will stand there and say something which is damaging to your fellow officers?---Or stupid maybe the - - -

What's wrong in saying something stupid? It doesn't matter if something stupid is said on a body-worn video?---Mm mm. Just - just - - -

Isn't the fact is - isn't it a fact that you are concerned that someone will say something which amounts to a racist comment about the incident which has just occurred and that's why you're warning people that the body-worn video was on. Isn't that what you were doing?---Your Honour, I would say me saying, "The camera is on" is no different to the little sign over there that says, "we're recording".

Except the circumstances are that there's a bleeding Aboriginal man who has just been put in a paddy wagon, there's a group of police officers standing around as we now know there were subsequent issues about all the events which occurred, at which you were present?---Mm mm.

And the circumstances were potentially disadvantageous to any police officer who had done something wrong if the wrong comments were made. Isn't that what you were concerned about?---No.

Were you concerned that someone might say something relevant to the fact that an Aboriginal man had just been bashed?---No.

THE CORONER: Or police officers might collude about the events so that the story is straight?

MR MCMAHON: Were you worried that something might be caught on body-worn video?---No. No, your Honour.

Now, I am going to ask you some questions about texts and so on but I am not going to repeat the questions that have been asked already, do you understand?
---Mm mm.

I am just going to build on some of that and you and I and everyone else can just take it as a given that roughly what has been said has been understood, all right?
---Yes.

But with the text messages that you've been take not between you and Constable Rolfe, do you accept that when such messages are sent between you and Rolfe that they are both private and that they are intended to remain private?---The expectation is I believe that they're private.

Yes. And do you accept that the effect of keeping them private is to conceal their content from anybody else. It's obvious isn't it?---Yeah, if they're private communications, yes.

Yes, they're private communications. And as you well know, it has been put to you in a variety of ways, that a number of those messages are, in fact, plainly racist, do you accept that any of them are racist? I think you've already accepted that so far in your evidence?---One of mine, yes, correct.

Only one? That's the one about the woman who thinks she's an Aboriginal and she's doing a good impression because she's lying drunk in the dirt?---Yes.

You accept that's racist - correct?---Correct.

Do you accept that your actions on the job as a police officer can be influenced by that kind of racist messaging which passes between police officers who work together?---I - I don't know - I don't know.

You don't know?---I don't know.

Do you accept that the way you think influences the way you act?---I'll accept that.

Yes. And the message that you just referred to, do you accept that it reveals an attitude - this is the one about the woman lying drunk, do you accept that that reveals an attitude of contempt for Aboriginal people?---For drunken people.

Pardon?---For drunken people.

For drunken people?---Mm mm.

Sergeant, I don't want to rehash some of the evidence that has been painfully extracted, but the messages that we're talking about, "who is the silly bitch? She thinks she's Aboriginal, she's lying in the dirt, pissed." It's about a drunken Aboriginal person and it's statement - a series of statements revealing contempt for Aboriginal people?---For drunken Aboriginal people - the people that we deal with here in town.

So now we have an acceptance by you that it's (inaudible) drunken Aboriginal- - -?---No I was just - I was just saying it wasn't for Aboriginal people as a whole.

"Who was the silly bitch?" - we'll ignore the misogyny in that and, "Fuck no, some white bitch who thinks she's Aboriginal". Rolfe doesn't tell you that the person is lying in the ground pissed, you already know that from some other conversation because your answer is, "Lying in the dirt, pissed, doing a fucking good impression" and I'm inserting now - "an impression of being an Aboriginal". You're saying that she's lying in the dirt, pissed, and therefore looks like an Aboriginal?---No.

It's plain and it's almost incredible that you would seek to deny that this expressions you've used there reveal contempt for Aboriginal people?---No, I - no. I don't think they do.

Did you ring up your friends recently after this text was made public and say, "I've said a terrible thing about drunken Aboriginal people, or did you say, "I'm sorry for saying a terrible thing about Aboriginal people?---I imagine it was the drunken and that's - that's what we've discussed.

That's how you've confined your tearful apology to your Aboriginal friends, was it? "I'm sorry I spoke about drunken Aboriginal people this way"? That's not true is it?---No - - -

You spoke to them and you apologise for speaking about Aboriginal people that way?---I said that was my text, yes.

Do you accept that when you send such texts or you engage in communications where such racist texts go back and forth between police officers who work together, do you accept that by doing that you are now revealing what the workplace culture was at that time?---No, I don't - I don't believe so. I don't - no. I would say no.

Do you accept that if messages are going back and forth, not one but several and then more than several, that the practice of doing this begins to reinforce the habit of sending racist messages to each other? It's pretty obvious, isn't it?---Well, are you talking about my texts or - - -

I'm talking about the practice of doing it?---My texts?

It's a general question. Your texts are an example of what I'm talking about, that when people send text messages back and forth like this - - -?---Yeah.

- - - it becomes acceptable. One terrible text tells us something. For instance, a person might say something foul and vile and filled with venomous hatred. They might only say it once, it tells us something. But when there's a repeat of messages going back and forth it tell us something else. It tells us there's a culture. Do you accept that?---If there's texts yes, but talk - like, my phone I've got the two that I sent. I think it's the two.

Can you say that again? I didn't hear?---I can't talk - I can't talk for everyone.

No, I'm asking you a general question though. I'm asking you to apply your intelligence to the question?---If the texts are flowing?

Yes, that they reveal a culture?---Of acceptance, yep. Yep.

Do you accept that you thought it was okay to send these texts, that it was safe to send these texts like, "Lying in the dirt pissed doing a fucking good impression" and so on, that you thought it was okay to send those texts because, firstly, there was prior to you, you've already accepted that; and secondly because you were working within a culture of impunity that you thought you were safe from accountability for such texts?---No, I don't - - -

Do you accept that you thought you were safe from accountability for such texts?---By sending a text?

Sending racist texts. It's only three minutes, five minutes ago in this court you spoke about the importance of accountability to her Honour. You were talking about drunken Aboriginals who had gardens full of empty beer cans?---Yeah.

You were talking about personal accountability. I'm asking you about your personal accountability?---I don't know. I'm stuck now, I'm sorry.

Do you accept that you sent such texts and never criticised Rolfe when he sent you a similar text, because you did not think you would be accountable for such texts?---I don't think I ever thought am I or am I not accountable. I think the assumption is because it's a text that who else is going to see it?

The assumption was that you were not accountable, correct?---I guess that's - yeah. I guess that's - - -

The assumption was that you enjoyed impunity for such texts, correct?---No, I don't think that.

That there would be no punishment for such texts. That was your assumption, correct?---No, I don't think - I don't think I even thought that.

Do you accept that where there is a culture of a lack of accountability for such racist texts that that culture can infect every part of the job that the police are doing? That once you let in a culture of racism at some part of the job it infects other parts of the job. Do you accept that?---I don't really know how to answer that. I could just say yes.

Do you accept that a lack of accountability for racist language quickly becomes a lack of accountability for racist action?---I couldn't say.

You're not denying that, are you?---No, I'm just saying I couldn't say. I don't know.

But where there's more than one account, more than one racist text, where there's one and two then three then more, and more people exchange such racist texts, do you accept that that can lead to a lack of accountability for a racist action with those same people?---I'm - I'm not it's not true but I don't know. I can't say.

Do you accept that it's easier to engage in racial acts if you are in the habit of using racist language?---I wouldn't know. I don't know.

In 2019 as is apparent from these text messages which you've been shown there were racist texts bouncing around between various people with whom you worked. And you've been shown some of the texts that you've sent in the last two days in your evidence, you understand that?---Sorry, I - something was happening, I wasn't listening.

She's just murmuring. don't worry about it. You accept that you've been shown some texts that you sent?---Yes.

How many other texts in 2019? And I'm not talking about your whole life, I'm just talking about 2019, a year upon which you've no doubt reflected because of the events which lead us all into this room today. How many other texts of a racist nature did you send in that year?---I'd like to say none.

But that's not true so - - -?---Well, I don't know if it's true.

You don't know?---I don't know if it's not true.

You may have sent more?---I may have sent less.

Well, it might be none or more. You're not going to stand here and say, "I didn't send any other racists texts"?---Well, I don't know and I don't know. I don't know what texts I've sent. If you would say to me, "Have you sent a racist test?" I would just say no, not because I'm being deceptive or anything but because I just don't think I did. But then you may show me a text and you might say, "Hey, this is racist." But it might be a joke, it might be a picture with something. I don't know.

And then if shown and then cross-examined for an hour so you might agree that it's racist. And then you join a long line of police who've come into this court, every one of them, virtually everyone except one has said, "There are no other racist texts that I'm aware of." That's your answer too, is it?---Well, I don't know of any other - I've seen these ones. I don't know of any others.

Yes. And in 2019 did you hear racist language around the police station or with the police with whom you work?---No.

And that would join in with many other except one who have come into this court to give evidence. Do you know that every police person, every police officer who's come into this court to give evidence about issues and when they've been shown that text every one of - or those texts, every one of them has professed either shock or disappointment or dismay at seeing such texts?---I think - yeah. That they've shown shock and dismay.

Yes. I mean, you've been following the case either in the media or by you being in court, haven't you?---Yeah, I've watched on the pod - whatever it's called. Sorry.

And just so we can be clear, is there any racist language that you've heard at the police station - as I understand it you're saying there was no racist language that you heard at the police station or with your colleagues in the year 2019, is that correct? Is that your evidence?---Yeah, I - I'll go with that.

And you're aware of no other racist texts that you sent or received in that year except the ones that have been proven to you as being sent or received in this court, is that your evidence?---Yep, correct.

Yes. Thank you, your Honour.

THE CORONER: Yes.

MR ROBSON: I believe it's my turn.

THE CORONER: I'm not sure, is that - nobody else?

MR FRECKELTON: No questions from me, your Honour.

THE CORONER: Yes, Mr Robson.

XXN BY MR ROBSON

MR ROBSON: Thank you, your Honour.

I'll be fairly brief, Sergeant Kirkby. Just going back to the unfortunate text exchange you had with Constable Rolfe where you make the comment, "Lying in the dirt pissed," do you remember where you were when you exchanged those text messages?---No. No idea.

I'm assuming you're on duty?---I'm thinking maybe I was listening to the radio but I don't know.

Okay. Your statement you made in this matter was, as we know, made on 19 August. Do you recall the circumstances in which you were asked to provide that statement?---Where I was or - - -

Yes. You've said you were on sick leave at the time. I assume you were spending most of your time at home, is that right?---At home, correct.

And do you recall how you were asked to provide the statement?---Someone came to give me a summons, your Honour. I didn't take it very well.

Was that on 16 August, two days before?---Thereabouts, yeah, correct.

Or three days. Two days. And how were you feeling at that time? You were on sick leave. How were you doing in terms of your state of wellbeing?---I think I was preparing to come back to work. I was trying to get ready to come back to work.

Right, and you received the email from Detective Superintendent Lee Morgan, I think it was the -

I assume that's in evidence, or in the brief, the email, your Honour.

THE CORONER: Look I know that it was shown to the officer, I'm sure that I can get clarification as to whether or not it's in the brief.

DR DWYER: I don't think it is currently. There's no difficulty with adding it.

MR ROBSON: I'll just provide it, and it can be tendered, but - - -

THE CORONER: Well that will be our next exhibit on the list. So that's an email is it? Dated?

MR ROBSON: I'm just trying to find it now, your Honour, I've got - - -

THE CORONER: The officer has one, I think.

You've got that email there?---That one?

Yes - - -

MR ROBSON: He's marked it though.

That's an email - - - ?---That's Mr Boe's - - -

MR ROBSON: Counsel assisting to my instructor. In which we asked - - -

THE CORONER: Okay. Right, okay, sorry I'm confused.

MR ROBSON: I'll find it in a minute, I do have a copy.

DR DWYER: It will be exhibit 15 when my learned friend locates it, your Honour.

MR ROBSON: And that's an email you received from Detective Superintendent Morgan on 18 August, correct?---Correct.

And the next day you completed your statement, the 19th?---Correct.

I don't think the witness needs to be shown the email - - -

THE CORONER: Sure.

MR ROBSON: - - - I think we agree I think, what it is. I tender that, your Honour.

EXHIBIT 15: Email from Detective Superintendent Morgan on 18 August to Sergeant Kirkby.

MR ROBSON: Now, just briefly in relation to your own community experience, you've already told us you worked about 18 months in I think a total of five remote communities?---Correct.

And you have been very honest about your first impressions about landing in Kintore?---Correct.

And it's fair to say you were shocked by the conditions?---Correct.

You wanted to stay on the plane and return?---I would, yeah – I would have like – that's how I felt at that time.

But you stayed on?---I stayed on.

And you initially it was to be a two week or 10 day stint, correct?---Ten days, I put my hand for a 10 day – I think someone was going on leave.

Yes, and you ended up staying for five weeks?---Correct.

During that time, did you suffer an injury?---I – I don't know what it's called, I blew my ACL.

And you could have left the community, but you stayed on, during - - - ?---I – I went to the clinic and got some pain killers and - - -

Right, and you stayed the full five weeks?---Stayed, I – yeah I didn't want to leave.

And you mentioned, you were asked – I think you mentioned in your evidence, working with Pete Stowers out at Kintore?---Correct.

And he's a man that you respected?---Very much so.

And you've mentioned also, that Imparpa, (inaudible)?---At Imanpa.

Imanpa?---Imanpa, yeah, correct.

And he – both he and Pete Stowers took you around and introduced you to Elders, and told you a little bit about the community?---Correct.

Apart from that, you didn't have any induction in relation to the other communities you worked for, correct?---No, no.

And you were asked, in relation to Pete Stowers of Kintore, I think counsel assisting yesterday asked you whether he developed good relations with the Kintore Community, and you'd agreed - - - ?---A very good relations – ship, seemingly.

But in terms of your working in remote communities, do you feel you developed good relationships with members of the community?---Yeah, I've got people in – like some – obviously I don't live here anymore, but you'd – you'd get called out to, when you're in town sometimes. Folk coming into town and.

You've been asked some questions, and you've been very candid in your statement in your evidence, about the negative attitudes you've developed towards people who are drunk in public, or at public places, in Alice Springs?---Correct.

Do you feel that's ever affected the way you actually dealt with those people in the situation?---No I don't – I don't think so.

No. Am I right in assuming most of the situations would be you dealing with people that needed to be taken into protective custody?---Working in the POSI, or the PARLI, whatever it's called now, the – dealing with the bottle shops.

Yes?---Yeah, it was just dealing – dealing with the people.

In relation to picking people up from the street, and taking them into protective custody, what's the general process there?---Uplift them. DASA is the first port of call. The – well home, if they can. If there's no one there, then it would be DASA, which is the – where they like rinse – or you call it, they have a sleep for the night, or sleep until they're sober. If you can't find any of those two, then it's the watch house.

And I guess there's some paperwork to be prepared in relation to (inaudible)?---Yeah, you would do a – complete a health questionnaire, or the watchhouse staff would complete the health questionnaire, and you would do PROMIS checks, and.

So it's pretty routine stuff, I take it?---Pretty routine, yeah.

And was that during – I think you told us that you did about three years on point of sale duty?---I'd struggle to get off the POSI. I kept getting put back on it, and so I think about three years.

And so I suppose it became a fairly monotonous routine, working on the point of sale and - - - ?---Every minute takes 90 seconds when you're standing outside a bottle shop.

In final paragraph of your statement, and you've been asked some questions about your comments there, when you were asked, I think at question 11 of the email you received from Detective Superintendent Morgan. You were asked effectively whether you have any suggestions, as to recommendations the Coroner might make with respect to the prevention of a future deaths in similar circumstances as Kumanjayi's?---Mm mm.

I won't read the whole par 11 of the email. And I don't need to read, or have you read what you've committed to writing in the final paragraph of your statement. But is it fair, if I can put these to you, that what you're intending to express in par 23, are these kinds of propositions. Firstly, you express the view that police are entitled to defend themselves from serious attacks, including stabbings, by the lawful use of their firearm, if the circumstances warrant?---Correct.

And that it will be wrong for the Coroner to send a message which suggests that police are not entitled to lawfully defend themselves against serious attacks?---Correct.

And that is so, regardless of the race of the individual who might be engaged in seriously attacking a police officer?---Correct.

And with regard to your comments in relation to Kumanjayi Walker. Is that what you're essentially intending to convey, that Kumanjayi's race should not obscure the fact that the police involved in his arrest, were entitled to lawfully defend themselves?---Correct.

And that's not to deny the loss of Kumanjayi's life, as a tragic matter?---No.

And that there may be lessons to be learned from that incident?---I believe so, yes.

Just finally, in relation to the incident involving the arrest of Cleveland Walker, where you were shown some video footage yesterday?---Yeah.

And that occurred, we know, on 1 April at Anzac – 1 April 2019, at Anzac Hill, and it was night time, about 7.30 pm, correct?---Correct.

Now we've seen on the video footage, when you go up the hill, you turn your video footage on, as your approaching the position of Constable Rolfe and - - - ?---Correct.

- - - Cleveland Walker on the hill. You get to the position, and then sometime after, we can see on the footage, looked like you're fumbling with your glasses?---Correct.

You recall that?---Yeah.

And then sometime after that, you say, "Oh what the fuck"?---Correct.

And then sometime after that, you say "Camera on", or something like that?---Correct.

Was the, "Oh what the fuck" related to camera on, or did it relate to something else?--I'd lost my glasses.

Now we can see on the footage, that obviously Constable Rolfe had apprehended Cleveland Walker some way up the slope of Anzac Hill, is that right?---Pretty much down – it comes down, flattens out.

Right, but is it some way up the slope or - - - ?---It's – this, your Honour, if you know the RS – our building, we were close to that. We probably ran half way into what were beside the building, but half way along the building, so may be 20 – 30 metres off the road or.

Right, but correct me if I'm wrong, you and other police remained at the bottom of the hill, near the parked police vehicle?---Just Constable Rolfe and myself. That – the others were up the top of the hill.

Right, and at one point, Constable Rolfe had gone up the hill and apprehended Cleveland Walker?---Kind of. The town side, Cleveland had run up Anzac Hill, and around, and then coming down towards the St Phillips, it's – it's the big hill. And so Constable Rolfe and myself stayed down the bottom. There were police up the top. You could see the torches. And we stayed down the bottom. But basically, it was to – to get Cleveland to run down and – and if he was go – if we were going to find it – to come down to that spot, where there were no torches, and that's basically what he did.

But we see on the footage that you are walking up towards the location where Constable Rolfe had - - -?---Correct.

- - - had Christopher Walker?---Yes.

What I'm asking you, were you down at the bottom of the hill with the police vehicles before he started walking out?---Correct.

And had you had your body-worn video on at the bottom of the hill before he started walking up, would it have been able to have capture anything at the location where Constable Rolfe had apprehended Christopher Walker?---No, I ran around trees and things. So, it wouldn't have captured.

It was night-time, of course?---Yep.

Do these cameras have any sort of light on them to illuminate?---When the cameras are on, your Honour, you push the button twice and it's got a red light that flashes.

I don't mean that, I mean in terms of casting light in the darkness. If there's street lights on, I take it obviously there will be light there?---Yeah, I don't think they have low-light capability or anything like that, sir.

And you've been asked some questions by counsel assisting yesterday that suggest that you turned the camera on late. Do you agree that you turned the camera on late, or perhaps turned it on at the point when you were aware that Zach Rolfe had apprehended?---He'd been – yes, Constable Rolfe had Walker. I think I turned it on as I start running.

Do you agree with the proposition that you turned it on late?---Not really, no.

Well, that's all I wanted to ask, thank you.

REXN BY DR DWYER:

DR DWYER: Just very briefly, my learned friend just asked you some questions about when you received your summons to give evidence in this matter. Is that right?---Correct.

In this inquest? You received it by email. Is that right?---No, Superintendent Morgan

came to my house.

And you were angry when you received it. Is that right?---I kind of lost my shit a little bit.

Okay. Why?---I don't know, I was just angry.

You're still a member of the police force aren't you?---I am.

How long had you been on leave for?---Maybe four months by that stage.

You accept that it was legal and lawful to provide you with a summons to give evidence in this inquest?---I took the summons, yep.

And you accept that it's important for you, as a police officer, to obey a lawful direction to give evidence in this court?---Yep, yep.

And you accept, do you, that it's important to be accountable for any actions that a police officer takes?---Yep.

The Code of Ethics which is in front of me, I'm reading it to you, clause 27, is that, "Members must be receptive and responsive to lawful orders and instructions given by the Commissioner of Police or any person lawfully entitled to give such order or instruction". Do you respect that?---Yep.

Do you think it was appropriate for you to "lose your shit" when you're provided with a summons to give evidence in this court?---No. It doesn't lessen it, but I apologised for doing that later, not then.

You apologised to Superintendent Morgan, who had behaved towards you with great respect?---He'd done nothing wrong.

Thank you, nothing further.

THE CORONER: We'll adjourn until 9:30 tomorrow.

MR COLERIDGE: Your Honour.

THE CORONER: Officer, you've been giving evidence now for a long period of time. You've been obviously subjected to a lot of questions and a lot of scrutiny. I know that's been difficult, but it's an important part of getting to the truth and ensuring that things are done properly and in the best way possible?---Thank you.

MR BOE: Your Honour, before you rise, may I just rise a matter for tomorrow morning?

THE CORONER: Sure.

You're excused. I'll let you go now. So, you can go?---Thank you.

WITNESS WITHDREW

THE CORONER: Yes, Mr Boe.

MR BOE: For a lot of reasons, I have to be on a plane at 11:45 tomorrow. I've raised with counsel assisting whether or not it would be possible, had we got partway through the next witness' evidence or if it had not started, that I could examine at 9:30 and be able to leave in time to get on that plane. Counsel assisting had no issue with that, unless any other party had an issue. I just wanted to flag that, because otherwise I'll have to make changes to my arrangements.

THE CORONER: All right.

MR BOE: Bearing in mind the order that - - -

THE CORONER: Dr Dwyer might not, but I might have an issue with that, Mr Boe, but, yes, Dr Dwyer.

DR DWYER: And I hadn't had a chance to discuss it with your Honour. But can I just say this to my learned friend because it might be relevant, it appears that – I've just been provided with this information at short notice, obviously, in light of the late application made on behalf of Sergeant Bauwens by Mr Suttner and Ms McNally. So, perhaps I'll just read this onto the record.

This afternoon, as your Honour is aware, there was an originating motion served on the Coroner's office by Ms McNally for Sergeant Bauwens, and an order has been made by Justice Brownhill that follows that. The original order, I think sought, or interlocutory relief sought, was that Sergeant Bauwens not give evidence at all.

But the orders ultimately made this afternoon by her Honour, Justice Brownhill are that there is a one day – a hearing for one day listed on 18 November before Justice Brownhill in relation to an application on behalf of Sergeant Bauwens and parties are granted leave to appear by AVL.

The interlocutory relief sought is that until close of business on 18 November, this is the – sorry, the interlocutory relief sought that was granted was that until 18 November, an injunction restraining the defendant or counsel assisting, that is the Coroner or counsel assisting, from calling the plaintiff, Sergeant Bauwens, to answer questions on matters that could give rise to a claim for penalty privilege.

So, it appears that Sergeant Bauwens will have to give evidence, or may have to give evidence, twice in these proceedings. But your Honour, subject to anything that your Honour orders, I would suggest that Sergeant Bauwens be called tomorrow morning as planned, that this inquest not be derailed in its mission to try and hear from witnesses in a timely, efficient and orderly fashion and that families who are waiting to hear evidence from Sergeant Bauwens about a range of matters have

evidence heard from him tomorrow.

That is likely to inconvenience everybody at this bar table because Sergeant Bauwens is likely to have to come back again then after 18 November, but subject of course, to any application that's made and ultimately, her Honour's ruling. But I propose that he give evidence tomorrow.

MR BOE: Your Honour, I was aware of that ruling when I made the request. Two things, if I may just briefly finish? Sergeant Bauwens was scheduled to give evidence yesterday and was moved at the request of his counsel, I'm not criticising that, to today.

Secondly, at the outset of this inquest, I indicated to your Honour the limited resources we have and your Honour and counsel assisting thankfully indicated that you would accommodate our availability, given our circumstances.

And thirdly, I don't propose to ask any questions that touch on the issue of privilege, of penalty privilege. And I expect to be only very brief on two discreet issues.

THE CORONER: Mr Boe, I'm declining to give you leave to go first tomorrow. We will try and fit in with your availability in relation to an opportunity to ask questions at an appropriate timeframe.

MR BOE: Thank you, your Honour.

THE CORONER: It won't be first thing tomorrow.

MS MCNALLY: Coroner, if I may just clarify three matters.

THE CORONER: Sure. Sorry, I haven't written down your name yet, sorry.

MS MCNALLY: Ms McNally.

THE CORONER: McNally, thanks. Yes, Ms McNally.

MS MCNALLY: Counsel assisting mentioned that we filed our application too late. Rather startling submissions given when I ran down to the Supreme Court, I was told I was too early. Secondly, when we were in the Supreme Court, junior - - -

THE CORONER: I'm not going to be assisted by commentary on the process. So, if there is anything substantive.

MS MCNALLY: There is. In court in front of a judge of the Supreme Court, the junior counsel informed her Honour that my client was now not expected to give evidence for several weeks, a matter that I said was - - -

MR COLERIDGE: I refute that, your Honour.

THE CORONER: Look, if we need a transcript - - -

MS MCNALLY: Your Honour, I've requested a transcript and I will bring a copy with me tomorrow.

THE CORONER: All right.

MS MCNALLY: My client, we obtain the orders that we sought, which was that my client is happy to come here and give evidence, the only issue is in relation to penalty privilege.

THE CORONER: Sure.

MS MCNALLY: Thank you.

THE CORONER: So, the proposal is, as I understand it and in accordance with the orders that have been granted from the Supreme Court, that we will commence with Sergeant Bauwens' evidence up until any point that an objection is taken in relation to the issues identified in the injunction.

MS MCNALLY: Thank you, your Honour.

THE CORONER: We'll adjourn until 9:30 am.

ADJOURNED