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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 5 SEPTEMBER 2022

Transcribed by:
EPIQ

THE CORONER (consecutively interpreted in Walpiri): I start this inquest by respectfully acknowledging the Arrernte people, the traditional custodians of the Mparntwe, Alice Springs, and the surrounding regions. The land on which we sit today. I also acknowledge the Warlpiri people. That traditional owners of Yuendumu, Kumanjaya Walker's home, his country, and his culture, and the place where he passed away. I pay my respects to all the Arrernte and Warlpiri elders, past, present, and emerging, and to all Aboriginal people sitting in court today, or who are following these proceedings from other locations.

At the start of this inquest, I ask myself this question. Do I know the story of Kumanjaya Walker, and Constable Zachary Rolfe? Do you? I expect that many will have followed media reporting of the trial of Constable Rolfe, and of his acquittal. Some may have listened to pod casts about the events, and the trial, or watched interviews with Constable Rolfe and his family. Many will have seen Constable Rolfe's and other police officers' body-worn video, and will recall the images and the sounds of shots being fired.

Some might recall that a few days earlier, two other police also attempted to arrest Kumanjaya. Their body-worn video shows Kumanjaya threatening them with an axe. Both officers backed away, and Kumanjaya escaped. You might wonder whether there is anything more to say. During this inquest, I'm inviting everyone to look a little deeper, and listen a little longer, because I think there is more to learn from, and more we need to try and understand about this story.

On the day Kumanjaya passed away, there was a funeral for a family member in Yuendumu. After the funeral, when the sun was setting, some family members gathered at the front of their houses, which were very close to each other. Perhaps they were grieving, vulnerable, and thinking and talking about the funeral, or about the man that passed away. In those circumstances, I wonder how it looked and felt when police arrived? What did it sound and feel like for Kumanjaya's family when they heard those three gunshots?

We haven't seen body-worn video from the family and of course, we never will because it doesn't exist. But just as it is of great significance to watch that police video, isn't it also important to hear from the family sitting outside, to hear their perspective? Who knows, they might have something very important to say. Maybe there is something we can learn.

After he was shot, Kumanjaya was dragged passed his family and taken to the police station. The police and Kumanjaya were locked inside and the family and wider community members were locked outside. Perhaps you recall seeing some body-worn video and CCTV from inside the police station? Maybe you recall seeing Constable Rolfe and other police trying to assist Kumanjaya?

But what about the people outside? We don't have the benefit of body-worn video or CCTV from their perspective. But we do know that they were all prevented from being with Kumanjaya as he passed away.

DR DWYER: Sorry, your Honour. Could you move closer to the microphone. They're having some trouble hearing you.

HER HONOUR: During the pandemic, many of us experienced a family member passing away in circumstances where we were unable to be with them during their last days and hours. While we largely accepted that there were good reasons for family members to be excluded, we nonetheless listened to stories from some of those affected families.

Through those stories, we tried to understand the additional pain and suffering that those families experienced because of their exclusion. With greater knowledge and understanding, we considered and debated the strengths and weaknesses, the costs and benefits of the safety measures that were adopted. We also empathised. As a nation, we allowed ourselves to feel their loss.

While I appreciate the circumstances are very different, in order to understand this story, I must seek to understand why the police station doors were locked and equally, I should also hear from the persons who were locked outside the police station that night and try and understand these events from their perspective. Maybe there is something important that this inquest can learn from them?

What does policing look like in Yuendumu? Are there examples of policing where the risk of this kind of confrontation can be minimised or even avoided altogether. Perhaps the community or local police or expert witnesses can help us understand what that might look like and how that might work?

We know from the trial verdict that Constable Rolfe was not guilty of any crime when he fired his Glock pistol. We also know that a few days earlier, when two police officers were threatened with an axe, those officers backed away. They did not use any force at all and no one got hurt.

On any given day in the Northern Territory, police officers find themselves in situations where they might be, and indeed are, confronted and threatened by an armed person or persons. In each case, the officer on the ground has to decide, perhaps in a split second, how to respond. In each case, there is likely to be a range of possible responses; de-escalation, no or minimal force, and potentially up to and including lethal force.

Out of a wide range of possible choices:

1. How is an officer to make the best and most appropriate choice?
2. What are the Northern Territory police guidelines on risk and use of force?
3. What is the training?

4. Are the guidelines and training adequate and sufficient to ensure police are equipped to make good choices in high-risk situations?
5. Should they be improved to prevent similar deaths in the future?
6. What should they be?

Today, I sit in court with eminent senior and junior counsel and their instructing solicitors who are here from around the country and who are representing the various parties affected by this death, or who have a specific interest in these proceedings.

The many counsel provide their expertise to ensure that I examine all the relevant matters concerning his death and consider and weigh all the different views and perspectives before I make findings, comments or recommendations. I thank them in advance for what I anticipate to be their vital contributions to the functions I must fulfill.

I thank my counsel assisting team, Dr Peggy Dwyer, Mr Patrick Coleridge and Ms Maria Walz for extensively engaging with the parties, the family, the community and the investigating police to ensure all the relevant evidence is gathered and presented during this inquest and for the hard work that they will continue to do.

I thank the Aboriginal Interpreting Service for their expertise and for their assistance in making this an inclusive process. I acknowledge the cooperation received from the Northern Territory Police Force, the Department of Health, the Community Justice Centre, other government and non-government services and Aboriginal organisations who have all worked and are still working to provide significant information to this inquest.

To the family and community of Kumanjayi Walker, I again express my sincere condolences for your loss. Your willingness to share your stories and understandings, with counsel assisting, and with this inquest, is gracious and courageous. I thank you for your important contributions. I have a lot to learn from all the witnesses who will be called in this inquest. And I will listen carefully to what each has to say.

I now invite informal statements from the elders and community of Kumanjayi Walker.

DR DWYER: That might just give us some bit – time for arrangements?

THE CORONER: Sure.

Dr Dwyer, is you wouldn't mind just introducing the - - -

DR DWYER: Certainly.

Your Honour, the first member of the community to give an informal talk to your Honour, is Mr Ned Hargraves, respected elder, who lives in Yuendumu.

THE CORONER: Thank you.

MR HARGRAVES: First of all, I like to say who I am. Look, name's Ned Hargraves, Jampijinpa from Yuendumu. I'm a Warlpiri man. And yeah, I do my best to give my information, and – and also you, as your Honour, and correct me, or if there's any – any possible way that if there's something misunderstanding, then I can try as well ask you, or my – I might ask Peggy. (inaudible), is that okay?

THE CORONER: That's absolutely okay, and thank you for being here today.

MR HARGRAVES: I must say, I'm a loud man. I'm a loud man. And you won't – you won't miss a word. So please excuse me. At the very beginning, at the beginning, we are – we are the Walmala(?). We are the warriors. The Warlpiri clan warriors. We are have told stories, Jukurrpa. When I say "Jukurrpa" it's Dream Time stories. That's – that's what I mean. And we look after our kids.

(Inaudible) our kids. Very long time ago, when early 60's, and 50's and 40's and something – 40's, our people, our beloved, were moved to settlements, as we call now, the communities. The communities. We were – we were bought there. Our people were bought there, but they haven't – they have not had guns. All they had was spears, and boomerangs, and nulla nullas. Our elders worked very, very hard. They sweat. And they were a (inaudible) as right from the beginning. As a right from the go. They were slaves.

We could not expect, they could not expect. They worked for – you know what they worked for? Flour, tea, sugar, tobacco. That is the only things that they would ever get what they earned, and what they worked for. Somebody else, when I say kartiya, white people, would ask for more. Hey, come on, I can't be working for this, tea and sugar, flour. But our people, has suffered. They get strong with us. And we know it. Because most of us have learned, and seen, what we, what they, been gone through. What they have gone through.

And right from today, we still have those memories. The trauma. But we never, our people, our Walmala when I say "Walmala" it's a nation of Warlpiri warriors. We are strong in our laws. We are strong in our culture. And even today, we still continue teaching our children. We have not lost our culture. Warlpiri Walmala warrior, Walmala. We are still here stop.

Your Honour, if I'm too loud, you just tell me.

THE CORONER: No, I'm very happy to hear from you, Mr Hargraves.

MR HARGRAVES: Thank you, your Honour.

But never, ever, ever, was afraid. Was afraid. I Walmala Warlpiri weren't afraid of kartiyas, what they were doing. When I say "kartiyas", white people. White people. Our children today, they are left and we have told, and they have told us, that this what had happened to us. This, what had happened to us. But the thing is, that everything in our culture, system, our ways of dealing with – with problems, we did it in our way. Never used a gun, but we didn't know who – what it was.

But it was a danger thing. It was a danger. Our problem, guns, we were afraid. Our people were afraid of using it. Because none of our – our country men, our fellow countrymen, were afraid (inaudible). But they knew how did that work. Not with a gun, not with a shotgun, not with a machine gun, but within the culture. We've decided, our people decided to, all right, this is what we got to live with. In the settlements they used to call it, now we call it the community. We call it ngurra, home. Ngurra. Home. Because that's where we belong to.

That's where our culture is. And we want to continue teaching our children, our future children, to be strong. And to keep our culture alive. We never knew, our people never, ever, ever, ever knew, that they would come into (inaudible). Oh, to resolve problems. In a – in an appropriate – in – not in appropriate ways, every and each and one of them, every one of them, had protocols. For example, my young sister passed away. A man had done something very, very bad. He passed away. She passed away.

But the man had to pay the punishment. He was in this situation that he cannot say no I can't do that, I can't do that. Hey, hey, I'm going to need, you know, white man, kartiya, to help me out. No. The problem was, and the answer was this. What I've done, I've got to go through. I've got to face the problem. We call that, at that moment, we called it, parumpurru. Parumpurru. And I'll give you the answer for that one. It means justice. Justice. In our culture, parumpurru is the answer.

It was the answer. It was the only answer. When that was done, and the spear, had – had to solve it. He had to get a spear. Thrust through legs. Not one, not two times. Ten. When the blood was sown then the family, the community, that was a sign of peace. It was sign for karrinjarla muwajarri. It was time, karrinjarla muwajarri meaning cease fire. It was meaning end of story. It's back to you and me, family, living, loving, caring, sharing. Doing the things that – that our people taught us. To keep the culture very strong.

That was parumpurrua That was parumpurru. That was the justice. It wasn't a gun to solve the problem. It wasn't a – a shotgun to solve the problem. It was a spear across the legs. That was the problem – that was the answer. We cannot argue with that. We could not argue with that. Nobody in our culture would not argue. But there were family members, there are family members like mother or the father-in-law's, we have a protocol. A protocol saying this. If this one was a japaljarri(?), a skin name, to me, I would say – I would call her – call it, makurntawarnu(?). Makurntawarnu meaning something very, very, very deeply, respected.

In that protocol, I cannot fight with someone who is – who is a (inaudible). I cannot disrespect he or her in that system. Because that system tells us to love one another – what – love one another. It tells us to keep our culture strong. And to respect. You know the story, each and every one of us. We know the story. That when Warlpiri Jesus was on the cross, what did they see? They saw the blood when they speared him. And that meant, it is finished. It is finished. That's what Warrnambool is. Not a gun problem. Not a gun, so not a shotgun. No. It was a spear. And a blood that was shed. Just out – it's – is – sorry, your Honour - - -

THE CORONER: That's all right.

MR HARGRAVES: - - - just asking.

THE CORONER: Sure.

MR HARGRAVES: Your Honour, we just preparing something.

THE CORONER: Thank you.

MR HARGRAVES: What to say – how to say it. When young Kumanjayi Walker was shot, (inaudible) meaning our uncle, I said earlier about deep respect with makurntawarnu. Deep respect. He was a – he was a (inaudible) man I called him (inaudible) because family lines. I'd say that because I share something very wonderful. Very – something very special was he. He was a wonder, a loving wonder. Someone very special.

It is important to understand, each and every one of us today, to have someone like him, who is very special. I – I want to say that within the culture, we have these protocols, that we must not disobey. We do not – must not disrespect it. Because it keeps us in line. Kartiya people in line, what it means to them, kartiya, white people, what it means to them, to see someone – to see someone, ah, he's just another guy, or he's just someone. Nothing very special.

But for yapa for our culture – in our culture, yapa it means very, very deeply to respect someone. The punishment, the things that we want, in the community, the things that we want, to replace. We want the police, we like the police – we like the police, because they help both the law. We want them there. And we want to be able to work together. We want to teach, not because kartiya policemen are always right, but I must say, some of them are stupid.

They don't want to listen to you and me. But we – somewhere along the line we've got to find that answer. We must work together to make it a community that is safe for our children to live. That night, they were a lot of bang. Everybody was at funeral, there was a loud banging of the gun. We had to gather all our children, and to protect them. Then later, we went to the station, to the police station, and to be there. And we asked that question, of saying, is he alive? Is he alive? Wankuramani(?) meaning, is he alive?

There was no light, there was no answer. There was an answer, the lights were off. We were terrified. The whole community was shattered. We were shattered. Completely terrified. 1798, there were a lot of killing, over the east, that's where it all started. And that's where it hit. Then it continued. 1928. The massacre broke, killing 70 men and women and children. Where this man came from? Two. One, it was in the soldier William Murray. Then became a policeman. You know the story. Second, Zachary Rolfe was in the army. And got a police job.

The thing it slice. Your Honour, excuse me. This must be (inaudible). I'll say it again. This must be karrinjarla muwajarri meaning ceasefire. No more. No more. It is finished. I want to say thank you so much, your Honour, for listening to me.

THE CORONER: Mr Hargraves, you have given us so much to think about. It is - -
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MR HARGRAVES: And I hope I made – made sense.

THE CORONER: - - - you've made a lot of sense. I've got a lot to learn. But understanding the two different perspectives, understanding the two very different stories and history, that is extremely important. And your goal to work together, to make the community a safe place for our children, we all share that goal.

MR HARGRAVES: Your Honour, one last thing, there should be not – there should be no guns in the remote communities. There should be no guns, period, no guns. Please take note. Thank you.

THE CORONER: Thank you, Mr Hargraves.

Yes, Dr Dwyer?

DR DWYER: Thank you.

Your Honour, may I now introduce another very respected elder, Mr Robin Granites.

THE CORONER: Mr Granites, welcome.

MR GRANITES: Before I start, I would like to thank Arrernte people of Mparntwe, Alice Springs, and the Larrakia people of Darwin for hosting us on their country during these difficult times. We say thank you.

My name is Robin Japanganka Granites. I am a senior Warlpiri elder and I speak on behalf of Warlpiri people, on behalf of Yuendumu, on behalf of the family of Kumanjaya Walker, and on behalf of the Parumpurru community committee who is the party of this coronial inquest into the inquest of Kumanjaya Walker.

We are here to speak the truth. We have always spoken the truth because all we have is our truth. We do not want you to tell us what we need and what we want. We will tell you what we want. We know the difference between asking and telling.

We need to dig deep to let Australia know our young Warlpiri lost his life. This is why this inquest is so important. The pain we feel is real and the past has led us here. We feel for us to move forward, there cannot be another injustice. We know what's best for Warlpiri people. We witness what happened to Kumanjayi. Our parents, their parents witnessed the last state sanctioned massacre of Aboriginal people in Australia. Let's have the courage to answer these serious questions about how Kumanjayi passed. We have nothing to hide. All we have is our truth.

For those of you who are here attending this coronial inquest, did you know who Kumanjayi Walker was? Kumanjayi was a quiet young man who his family loved, loved by his community, his people. But since the shooting, he has been blamed for his death. This coronial inquest to kartiya, non-indigenous people, is another step towards understanding what happened. To us yapa, that's Indigenous, this is also our life. The impact of the violent was inflicted in a home by a young 19-year old family member shot down by a police officer in his home in front of his family in his community and captured on a camera for the world to see.

There were no medical service or support, no communication or help. We would never be able to understand the feeling of hopelessness, fear and hurt that we carry. We got to stop this injustice where a young man has lost his life. We fight for Kumanjayi and we will never stop fighting for justice, not only because of our love for Kumanjayi, but for the love of young people in our community who deserve to live a free life, free of fear. No one deserved to die this way and Australia cannot allow it to happen again, for this to happen again.

The shooting is caught on camera for the world to see. But this police officer has walked away free from the hands of Australian justice system. It's been three years, but it felt as though it happened only yesterday. We won't see Kumanjayi again in this life time. But what has this policeman lost? Some media labelled him a hero, while calling Kumanjayi a criminal.

Just months after his acquittal, the policeman returned to the Northern Territory Police Force. For yapa, this is not fair. Parumpurru in our language means justice. The Parumpurru Committee comprises of elders. Kumanjayi's family members, the community, we represent our people, and we represent Kumanjayi Walker. This cannot be the moment in time for the papers to be left unread. Recommendation cannot be ignored, because this is about change. For this change to happen, we need to be part of the outcome.

We need to lead them, for we know what's best for our community and our people. This is Arrente country. It belongs to Arrente people. We are all guests here on their land. What we need, and what we want, is for the Coroner to come out and sit with Warlpiri elders. And talk to us. We invite you to Tanami Desert, in

Warlpiri country, to be part of our culture and law. We hope you accept our invitation, and listen to what we have to say, thank you.

THE CORONER: Mr Granites, thank you for describing some of the feelings that the community has experienced, because of this traumatic death. Feelings of loneliness, fear and hurt that you carry. I also hope that there is a future for the community where everyone can live without feelings of fear. And I hope that we can work towards that, during this inquest. I very much appreciate your initiation. And we will definitely work towards finding a way where we can accept that invitation at a time that is right for the community.

MR GRANITES: Our suggestion is we can have it soon, the better.

THE CORONER: Thank you.

DR DWYER: Would your Honour excuse my back?

THE CORONER: Sure.

DR DWYER: Your Honour, might I now introduce Samara Fernandez-Brown. She's a younger leader in the community, and a very beautiful spokesperson, if I may say. And she's going to come up now.

THE CORONER: Thank you.

Ms Fernandez-Brown, would you like to sit, or would you like to stand at the lectern?

MS FERNANDEZ-BROWN: What was that sorry?

THE CORONER: Would you like to sit, or would you like to stand at the lectern?

MS FERNANDEZ-BROWN: I'll sit, thank you.

THE CORONER: Okay.

MS FERNANDEZ-BROWN: I'm not quite as loud. Hello everyone. My name is Samara, and Kumanjayi Walker's cousin. Before I start, I would like to acknowledge and pay my respects to the Arrente people, whose lands we meet on here today, and for the next three months. Thank you for letting us be here.

I would also like to acknowledge my people, the Warlpiri people, for their undeniable strength and love. I acknowledge the Luritja people, who are also Kumanjayi's family. And I extend that acknowledgement to all Indigenous people. I'd also like to send my condolences and the love to all Aboriginal and Torres Strait Islander people, who have had their hearts broken by family loss, the same way we have.

Finally, I would like to acknowledge Kumanjayi, you are deeply missed. We are all here, at the inquest into the death of Kumanjayi Walker, but we shouldn't be here, (inaudible) at the inquest into the death of Kumanjayi Walker. On the night of 9 November, I was in Yuendumu. I was amongst my family and community when Kumanjayi was shot. And I was there the morning we found out he had died. The wails of my family's cries still haunt me. The images of devastation, the pain, and most importantly, the fear.

In the dark we waited. Pleaded for answers. And begged for the smallest amount of information. And we got nothing. Kumanjayi died in Yuendumu that night. He was 19 years old. I'd imagine he was in pain. He was scared, and he was robbed of comfort. His family gathered only metres away from him. We were all robbed of the opportunity to say goodbye. I can't imagine any circumstance where this is acceptable or excusable.

You would think this was the worst of it. But we continue to suffer. We've had to watch as Kumanjayi gets picked apart and ridiculed by those who don't know him. Those that didn't know his love for animals. His love for music. His love for candy. Those who had memories with him. Memories that are both a blessing to cherish, but also an anguish to remember. Knowing that they are all we have left of him. As a community, we have only ever sought justice. Justice for Walker. Through our heartbreak, we have complied, we have been respectful and we stayed graceful, and yet, we still suffer.

By the time we finish here, it will be three years since he was taken from us and, up until this point, we are still yet to hear the truth. Kumanjayi has gone. He cannot be brought back. That is something we are learning to live with. The trauma of losing him is still something we are trying to live with.

The ways our lives have been impacted is unimaginable. You cannot begin to understand how deeply his loss sits in our bodies, how it tears our spirits apart and how it will stain our country for generations to come. So we ask you, give us the truth, not a sample of the truth or what you want us to hear. Let our minds be free of wonder. We are owed that much. Work with us, work for us, to make sure no other family experiences what we have.

We are past the point of asking for change. We have an opportunity before us to action change, to forge a better way. We have an obligation, a responsibility. Listen to our truths, not just what you want to hear, not just those parts that are palatable. Open your minds and open your hearts to us, feel our loss and feel the urgency that we feel to change the conditions of this country.

Thank you.

THE CORONER: Ms Fernandez-Brown, I am very much impressed by your courage and your willingness to consider these matters so deeply and share those very considered thoughts with us. I am sorry that each time you are required to do

that, the anguish is real, but I feel the obligation and responsibility for change and we will work to see if there are better ways that we can live together.

Dr Dwyer?

DR DWYER: Your Honour, is that a convenient time for a short break?

THE CORONER: Yes, we will take a short adjournment.

ADJOURNED

RESUMED

THE CORONER: Yes, Dr Dwyer, are we now ready to take appearances?

DR DWYER: Yes, we are, your Honour.

THE CORONER: Thank you.

So, I will now invite counsel to announce their appearances and any expressions of condolence, if you wish to do so.

DR DWYER: Your Honour, I appear in this inquest as your Honour's counsel assisting and might I just say for the record, my name is Peggy Dwyer and I'm appearing with Paddy Coleridge, or Patrick Coleridge, and our instructing solicitor is Maria Walz, and I think I'm the only one that doesn't need leave, but my learned friends, most of them have already been given leave.

THE CORONER: I think they have all been given leave. Yes, and I'll just invite everyone, as we go around the front Bar table and then I'll move to the back Bar table.

MR BOULTEN SC: Your Honour, my name is Phillip Boulten and I appear for the North Australian Aboriginal Justice Agency. I appear with my friend, Julian Murphy and with Beth Wild who is currently the principal legal officer of the North Australian Aboriginal Justice Agency and we are assisted by our solicitors, Matt Derrig and Damien Bannock, David Gorry (sic) – Daniel Gorry, sorry, Daniel – and we're here with the assistance of lawyers from the Human Rights Law Centre, Nick Espie is in court, your Honour.

THE CORONER: Thank you.

MR BOULTEN SC: And can I just say at the outset, on behalf of NAAJA and our colleagues at the Human Rights Law Centre, we acknowledge that the inquest is being heard on Arrernte country and is being streamed to Yuendumu and throughout Australia and we acknowledge and express our condolences to Kumanjaji Walker's family and to the Warlpiri people and the Luritja people who have lost a brother, a son, a nephew, a cousin, a loved family member.

Your Honour, Kumanjaji's family and friends have endured nearly three years of grief and fighting for justice. They have sought answers and it has been a tough and painful journey and it still is. Those voices have made sure Kumanjaji's death has not been overlooked. The next three months are going to be very hard and NAAJA and the Human Rights Law Centre, your Honour, wish to support you to find the truth.

Many Aboriginal people have heard the voices of Kumanjaji and his family and they all feel pain too, everywhere in the Northern Territory, people are watching and standing with Kumanjaji's community and family, your Honour.

THE CORONER: Thank you, Mr Boulten.

MR MCMAHON SC: If your Honour pleases, my name is Julian McMahon and I appear for the Parumpurru Committee of Yuendumu Community. I'm instructed by Doogue+George and my instructor is Ophelia Hollway who is sitting in court. Your Honour, Mr Robin Japanangka Granites has already spoken about country and condolences so I won't enter that if your Honour pleases.

THE CORONER: Thank you.

DR FRECKELTON SC: May it please, your Honour, my name is Ian Freckelton and I appear with Amanda Burnnard, instructed by Sandy Lau for the Northern Territory Police Force as an institution and also for all of its members, save the following: Constable Rolfe, Sergeant Bauwens, Dr Narelle Beer who used to be an Assistant Commissioner of the Northern Territory Police Force, and also Detective Superintendent Pollock.

We are conscious that this matter is being heard on Arrernte country and being streamed to Yuendumu and we too pay our respects to elders, past, present and emerging. On behalf of the Commissioner of Police and the chief executive officer of the Northern Territory Police Force and Emergency Services, we extend our condolences to the family and friends of Kumanjayi Walker and to the community of Yuendumu for your loss and for your sadness. We are deeply moved by what we have heard already this morning.

The sincere wish of the Commissioner is to provide all possible assistance to this inquest, to listen to members of the community respectfully and deeply, to learn all lessons that can be learned from the tragic death of Kumanjayi Walker, to work collaboratively, so far as we possibly can, with all other legal representatives at the Bar table, and to make appropriate institutional change, to minimise the potential for such a tragedy to happen again.

This is a death that has radiated out in its pain to many and your Honour has heard about that already. We would like to say to your Honour that that pain we believe is experienced right through the Northern Territory and that includes members of the Northern Territory Police Force as well.

An indication of how seriously this is being taken by the police force is that Deputy Commissioner Smalpage, the second most senior member of the Northern Territory Police Force, is present in court and will be here for almost all of your Honour's inquest. That should be interpreted by the community and by all who hear us as an indication of the bona fides of the force to listen and to work with community in the interests of preventing avoidable tragedies in the future.

Thank you, your Honour.

THE CORONER: Thank you.

MR EDWARDSON QC: If your Honour pleases, I appear with my learned junior, Mr Frank Merenda, on instructions Luke Officer from Tindall Gask Bentley. Respects have already been paid by other counsel and I endorse what they said in that regard.

Your Honour, after the acquittal of Zachary Rolfe who I represent, I said, and will say it again, this is a tragic thing. A 19-year old man lost his life and a young police officer was charged with the most serious charge on the criminal calendar. He had a trial in its entirety and he was found not guilty at the end. We are encouraged by the fact that counsel assisting quite properly has said on more than one occasion that this is not a roving royal commission into Zachary Rolfe or his past conduct and, having said that, your Honour, I will leave the rest until the evidence unfolds.

If your Honour pleases.

THE CORONER: Thank you, Mr Edwardson.

And then, the back table.

MR MULLINS: Good morning, your Honour. If the court pleases, my name is Gerard Mullins. I appear on behalf of the Brown family with Paula Morreau who is not present in court today, and we are instructed by Maxine Malaney from Streeton Lawyers. The acknowledgement and condolences have been expressed on behalf of the Brown family, most eloquently by Ms Fernandez-Brown and there is nothing that I can add to that.

Thank you, your Honour.

THE CORONER: Thank you.

MR BOE: Good morning, your Honour, my name is Andrew Boe. I appear with Andrew O'Brien from the Queensland Bar who is not here, Dan Fuller from the New South Wales bar who's not here, and my daughter, Greer Boe, from the Victorian bar who is here, for the Walker, Lane and Robertson families.

We recognise that we are gathered on Arrernte land and we respectfully acknowledge that. It is important for us to acknowledge from the outset, your Honour, that your Honour and counsel assisting have program for very detailed examination under the Act, into the circumstances of Kumanjaji Walker. We very much welcome that, and we recognise, as do our clients, that your Honour's determinations, or findings and recommendations, cannot result in any further prosecution of Constable Rolfe, in respect of the act which caused the death of Kumanjaji Walker.

That said, our clients are intensely interested in features within the scope of your Honour's interrogation and enquiry. And we are here to assist your Honour, to make the appropriate findings, and if possible, assist you in terms of the comments

and recommendations. In terms of what your Honour opened, earlier this morning, we acknowledge the detail and consideration your Honour is giving. We intend to additionally focus upon an assessment made the Deputy Commissioner Smalpage in his most recent statement. When he wrote, and said, that the circumstances, even after the axe incident did not warrant the deployment of a TRG.

Which connects with the deployment of an IRT. The fact that the material shows a high degree of confusion amongst police about that deployment, is a matter of specific attention that we hope to assist you with. Thank you, your Honour.

THE CORONER: Thank you, Mr Boe.

MS OZOLINS: Your Honour, my name is Sally Ozolins, and I am here on behalf of the Northern Territory Police Association. I appear with Ms Nobbs-Carcuro of the Police Association, who's not here in court today. As your Honour is aware, the Northern Territory Police Association represents a large number, some 97 percent of police members across the Northern Territory, including sworn police officers, Aboriginal community police officers, and police auxiliary.

We recognise the effects of the tragic events in Yuendumu in November 2019, and the effect that it's had on all of our members, collectively, and in some cases, individually. On behalf of the members, we would also like to acknowledge the loss suffered by Kumanjaya Walker's family, and the grief that they continue to suffer. The objects and purposes of the Association, your Honour, are generally speaking, to engage in matters that are related to the welfare, or of benefit to its members. And the Association is the industrial voice for members, ensuring protection of work place rights, and including the terms and conditions of the employment.

The importance of this inquest is acknowledged, and in accordance with the Association's objects and purpose, we welcome examination of the challenging, demanding, and often dangerous environment in which members are required to perform, and discharge their duties. And we also acknowledge the equal importance of examination – of a proper examination of the effectiveness and appropriateness of policies that govern the circumstances and conditions in which members perform their duties.

MR BOE: Your Honour, I omitted to acknowledge that I'm instructed by Christian Hearn and Julie Pincus who's at the Bar table from Hearn Legal from Sydney. Particularly since they are continuing to act and instruct on a probono basis.

THE CORONER: Thank you, Mr Boe.

Yes.

MR HUTTON: Your Honour, my name is Tom Hutton, and I seek leave to appear on behalf of Northern Territory Health. I'm instructed by Klarin Sivyer from NT Health, who's in court here today. NT Health wishes to extend its sincere condolences to the friends and family of Kumanjaya Walker, and to all of those who cared for him,

including in the community of Yuendumu. And we are very sorry for your loss. NT Health is otherwise committed to providing any assistance and information that it can to this inquest, in the hope that some positive change may flow from whatever (inaudible).

THE CORONER: Thank you.

Dr Dwyer.

DR DWYER: Thank you, your Honour. Your Honour, I think we now are ready for the two-way learning program that's been arranged by Jodie Clarkson. And you'll see your Honour, that Valda is there to assist.

THE CORONER: Thank you.

Thank you very much for coming at the very beginning of this inquest, to give us some important education around the culture that we're engaging with during the course of this inquest. We really appreciate that.

MS CLARKSON: Thank you (inaudible) for inviting me to speak.

It's good to be with you all in a place of listening and truths. I acknowledge Arrernte people, their country, their law holders, their law, their governance, and their language. I acknowledge yapa, and jukurrpa and thank Justice Armitage (sic), for inviting me to speak. And I thank all my teachers of the past 26 years, for sharing so generously, and so patiently, with this ignorant white girl.

I'm going to look at – we're going to have a look our two laws, side by side. We'll look at the landscape of languages here in the centre, for our visitors. I'll touch on other languages that impact our communication here in this court. We'll look at Warlpiri and English, some things, side by side. Some concepts of human culture that are relevant, language and culture in this context. And working with interpreters, who are officers of the court.

And this is our interpreter, Valda Shannon. And it was so wonderful to see her sitting up there with Judge Armitage to begin these proceedings. Our two laws, side by side. Jukurrpa is law, Warlpiri law. Common law is Australian law, (inaudible) law. Jukurrpa is kept and understood in Warlpiri language. Our law is understood in English. Warlpiri way is gerontocracy which means old people. Old people hold the power. And it was so wonderful to see Mr Hargraves and Mr Granite as our two first speakers here today, acknowledging that gerontocracy.

Ours is a democracy. People power. And judoka has been around forever. White fellow law came out of the Norman Conquest of 1066. Warlpiri law came up from the ground. Our law came from England. Warlpiri law is held by its law holders. Our law is held by the Australian Judiciary. Warlpiri law is held in ceremony, songs, dances, stories and body paintings. White fellow law is held on paper, and in computers. Yapa law never changes. White fellow law changes often.

Yapa law is followed by yapa, respected by (inaudible). Common law is followed by all of us who live in this country called Australia. Someone who breaks yapa law, maybe punished, or banished. Same for white fella law. People are punished or banished. Central Australia is one of the most linguistically diverse places in the world. We have 26 languages here, belonging to three language groups. The Arrernte group, Ngarrkic group and Western Desert group. Warlpiri is in the Ngarrkic group.

Most Aboriginal Territorians speak a first language at home, as their first language. Many people speak two or three first languages. English is a second, third, or fourth language, for most Territorians. To make things a bit more complicated, there's Pidgin's, Kriols, and varieties of English. Pidgin's a language that began when who people came together who didn't understand each other's language. So words were put in place so that they could talk to each other. So if those two people stopped associating, the language would disappear.

But if those two people fell in love and had children, then those children became the first speakers of that new language. There's a lot of kriol spoken in the Northern Territory. Not a lot here. Around Katherine, East Side Kriol, West Side Kriol. There's many varieties of Aboriginal Englishes. These are dialects of English. Some words have very different meanings to Australian English, my first language.

Deadly means great. Cheeky means dangerous. There are words that are completely different. Of the 7000 languages in the world, they all have words. These words go together in sentences and these sentences go together into conversations.

At all of these levels, when we're working between languages, there are opportunities for enormous confusion and misunderstanding. All languages are complex. The grammars, the differences are found in the sounds, the word structures, the word building and the sentence structures.

Meaning in any language is built around shared cultural constructs. Not just around what one word might mean in one language, but also around a shared world view within the group. In the way people use language, differences are extreme.

Rules of politeness, accepted topics of conversation, acceptable conversation partners, the use of silence and how to seek information varied between language groups like Warlpiri and English. Understanding each other across languages is helped when English first language speakers, kartiya, when we understand the similarities and differences between the two languages.

For many Warlpiri first language speakers, English is a second, a third or a fourth language. A foreign language that they have had to learn, as opposed to acquire, in their home as children. And legal English is a foreign language for all of us who have not studied law.

So, Warlpiri has six vowels and 18 consonants. English has 20 vowels and 24 consonants. So, there are 20 different sounds between our languages to hear and to speak and to understand. This is just a snapshot of some of those. So, the sounds in red don't occur in English. The sounds in grey sound to us like a B or a D or a G to our English ears.

There are many differences within the grammatical structures. So, in English, we have a fixed word order. We put our subject first, our verb and then our object. In desert first languages, the subject comes first, then the object, then the verb. These languages have suffixes. So, in Arrernte for instance, there's 250 suffixes. These are little words that go on the end of words.

And they do 250 different things to the word in front of them, whether they be a noun or a verb. With pronouns, in English, we have those ones, I, you, he, she and it. With desert first languages, there's extra ones. There's dual pronouns for us two, youse two, those two. In English, we have articles, prepositions, and conjunctions. Those joining words.

These words don't exist in Aboriginal languages in the desert here. In English, we have 300,000 adjectives to talk around, in between and complicate everything we have to say, and also be poetic. Here, there are some adjectives, but similarly is used in a really complex poetic and colourful way. Both languages have nouns, verbs and adverbs.

So, languages and cultures sit together, they're nestled together. The language incorporates the culture of its people. The words available to the speaker are only available for the concepts that are in the system of the culture of that language. New concepts that come into a language have to be explained.

There isn't just one to one. Our culture is a bit like this tree here, what do you call that one, Valda?

THE INTERPRETER: The desert old one?

MS CLARKSON: Yes, what do you call this one? (Inaudible), is that right?

VALDA: Yeah, Kookara(?).

MS CLARKSON: The Kookara, you see them growing down on the sandy country. They look like a hairbrush for the first 20 years, because what they're doing is they're investing all their energy underneath the ground to send their roots down, sometimes kilometres, to tap into a good supply of water.

So, like this tree, much of our culture, some of our culture rather, is out there for the world to see, but much of our culture sits underneath the surface. So, the things that are out there for the world to see are things that are not very emotional, like those things; food, dress, music, celebrations, games and arts. They're out there for the world to see. They're not very emotional.

Our deep culture sits down in the roots underneath the ground, the spoke and the unconscious rules. These kinds of things are where we confuse each other, offend each other, misunderstand each other.

Some of these deep things have relevance in this room. The ones – so yeah, the way we relate to one another, our ideas of what's polite and what's impolite, our concepts of time, our rules of conducting ourselves, our personal space and touching, grieving practises are different.

The way we handle decision-making, the role, theories of harm and contact, looking or avoiding eye contact, volumes of speech and patterns of expressing our emotions. All these things vary from person to person, culture to culture.

There's lots of beautiful language describes time across these three languages. All we have to do is knock down these walls and have a look at the sun and which direction the shadow is pointing to know exactly what time of the day it is. This thing that sits on my wrist, Meridian time, comes from a line in England. It's a western construct that the world conforms to.

But there is very different naturally ground ways of talking about time and thinking about time. So, good ways to talk about time is to attach it to things in the real world, in the concrete space before breakfast, after grand final; things that happen in the real world.

Expressions of distance are quite different between English and desert languages, attaching distance again to the concrete world from here to the wall, from here to Coles. How far? From here to the table, from here to the desk; looking at the real world rather than referring to distance in metric.

Relationship words have extended meaning here in desert Australia. Your mother's sisters are your mothers. Your mother's sisters' children are your brothers and sisters. Your mother's brothers are your uncles. Your mother's brother's children are your cousins and same on dad's side.

There are 16 Warlpiri skin names, eight for men and eight for women. This name determines yapa's responsibility to each other, to kin, to country through jukurrpa, the law. A very bit lore for yapa through kinship. Crosslink western communication in these situations generally people are forgiven if we all remember that we may not know what the right way is. So, Valda, how do we say, "I don't know"?

THE INTERPRETER: Yulpuna(?)

MS CLARKSON: Yulpuna, I don't know. So, interpreting is all about listening and understanding between two languages. And we've seen how different Warlpiri and English are. Translating is reading and writing in two languages. Sometimes, we can get these words mixed up, they're very different. Listening and speaking is

interpreting.

Warlpiri interpreters must speak both Warlpiri and English fluently and must follow the rules of interpreting, the code of ethics. The interpreter code of ethics is that whatever is heard in one language must be accurately, truthfully passed to the other language. The interpreter is in the middle. She is not on anybody's side. She is listening to the words and passing them from one person to the other in their language and back the other way.

In a non-public setting, everything that's heard is confidential. It is not the interpreter's story. They keep it in their heart. It's not the interpreter's job to interpret anything word for word. So, if we asked a Warlpiri interpreter to interpret this sentence, "An afternoon became hour for us, off we go. We bus to. We climb then go and we thinking only contra like this, close like that." Word for word interpreting is completely non-sensical between languages that are so different as English and Warlpiri.

An interpreter's job is to pass the message, the meaning of the message. So, what we would hear is, "In the afternoon we hopped off the plane and walked to the bus. We climbed on it, went on our way and we were thinking we were close, but we were wrong." An interpreter's job is to ensure accurate communication between both parties by helping us understand what are some of those differences that might stop someone from feeling comfortable to speak, that the way that we use our English words to help us understand not to say certain words or to say things in a certain way. These things - the volume of our speech is important.

So, all of this is happening. Now there is listening – we'll say it's English – listening to the English, understanding the meaning of what's been said, storing that, finding the right meaning in Warlpiri and speaking that out, then all the way back in the other language. Interpreters are officers of this court. Interpreters are our bridge between our languages and our cultures. Interpreters enable us to fulfill our human rights obligations to one another.

Everyone has a right to be linguistically present, to fully understand what's happening, to fully express themselves in their first language, their mother tongue. It takes a lot of energy, deep listening, high concentration, very high IQ, years of training and experience to interpret in courts. I acknowledge and thank all interpreters in this court – Mr Hargraves, Mr Granites and our court interpreter for this inquiry, Valda Shannon.

There are regional and generational differences within Warlpiri. Some Warlpiri's have different accents, depending on where that person grew up. Many young people borrow a lot of English words in their Warlpiri. Valda is a level 4 Warumungu and Warlpiri interpreter who can adjust her register according to the speaker's regional dialect.

Speaking is really important to understand each day what's going to happen. Our interpreters need context, and honest thinking and listening and speaking from

two different perspectives, two sets of vocabulary at the same time. Important things to know are what's going to happen, who is going to be speaking, the process, and what law words will be used. How do we unpack those law words? These things are good for Valda to be prepared each day.

This is a phenomenon that you lawyers have called gratuitous concurrence. It is when it doesn't matter what language someone asks you a question in, even if we don't understand a word of that language, we know they've asked a question because our voice goes up at the end when we ask a question. So many Aboriginal language speakers have been asked questions over many, many years and, at the end of each question, they'll nod their head. They're not nodding their head because they fully understood what they've been asked.

They may be nodding their head because they're feeling pressure to respond by a person of authority, a police officer. They may be nodding their head because they don't understand a negative question. If a question is posed in a negative form, like, "Didn't you see that nurse last week", it's hard to answer that question - "Yes, I didn't see that nurse." "No, I didn't see that nurse" – even in English. Using questions in the positive form: "Did you see the nurse last week", that can be answered by yes or no.

Someone might be just nodding their head at the end of every question because they're being polite, telling you what you think – what they think you want to know, or they just want to get this conversation over with. There are lots of reasons why someone might be nodding their head. It doesn't mean they're agreeing with what you're saying and we can't know that without the help of our interpreter.

It is good to avoid closed questions because these questions get a yes/no response, or a shrug or a nod. To draw out the story, ask questions in a narrative format: "Tell me what happened, then what happened? Who was there? Can we talk more about?" This way, the story is coming out. It's not closing off the story, it's opening up the story, so the person can share what they need to tell this court.

Speaking in this court, if we use clear, concise English, use narrative questions where possible, where (inaudible) law allows that, pause after each complete sentence, like Armitage J was doing this morning – good job. Please stop when Valda raises her hand. It means she needs to fully understand what you have said in order to accurately interpret. Please summarise legal arguments. These are impossible to interpret into any language, brief and debrief, and we all learning together.

We have all inherited a world made unequal by hundreds of years of empire and colonisation. Here our two laws sit together. I'm reminded of old (inaudible) Mitchell. At Ernabella Bush Court one day, he respectfully raised his hand and said to the judge, "Excuse me, judge, we're sitting here under my jukurrpa, my law in your court room, (inaudible) and (inaudible). They're big law in my world." So, that is how our two laws come together with our red kangaroo and our emu. Neither of these animals can walk backwards and neither can we.

The next three months is all about truth and truth in Warlpiri. Together, we can help Armitage J write down in her law paper the truth, the whole truth, and nothing but the truth. Thank you for listening.

Thank you, Valda.

THE INTERPRETER: Thank you, too.

THE CORONER: Thank you, Ms Clarkson, for sharing all of those learnings with us. They will be invaluable to all of us over the next three months. Thank you.

Yes, Dr Dwyer?

DR DWYER: Your Honour, the next stage of today's proceedings is for me to formally open or do an opening statement. I estimate that my opening will probably take about three hours. Would your Honour like me to start that now, or start after a break?

THE CORONER: I think we'll take a break and we'll start the opening after lunch.

DR DWYER: May it please the court.

DR FRECKELTON QC: Your Honour, before you take a break, there is a short matter I should like to raise with you, at your convenience. Perhaps after the break, but we're in your hands.

THE CORONER: Do you want to raise it now?

DR FRECKELTON QC: I'm happy to do it now.

THE CORONER: Yes.

DR FRECKELTON QC: Your Honour, we've just been hearing about the importance of truth. An integral part of that is accuracy and respect. This inquest is taking place well beyond a small court room with a number of people in it and it is important that what is said here, and the subject matter of what is being traversed, is accurately relayed to the general population. If it is not, there is a risk that that can undermine the integrity of the justice process and result in misperceptions as to what is being said and what people are endeavouring to communicate.

The Northern Territory Police Force comes here endeavouring to be cooperative and receptive and, as we've said already, to learn and to be measured and collaborative. There have been some issues which have been arising before this date and our honest wish is that they not continue to arise after today. Your Honour has quite significant powers to ensure that your processes are not undermined.

We're going to hand some things around to the – your Honour, and to the Bar table. We refer to two provisions, which are in relevant legislation.

THE CORONER: Yes.

DR FRECKELTON SC: And then I'm going to refer to orders which your Honour has made already in this court. And we're going to provide some other documentation to your Honour. I'm not going to labour any of the points. But there is an important message to which we would like to give to your Honour, and to our friends in the (inaudible) as part of the court.

Your Honour has some powers under the *Coroners Act* of the Northern Territory. Those powers are there under s 46 to inhibit any inappropriate behaviour that takes place in the precincts of the court. And it's often referred to as contempt in the face of the court. So your Honour can impose criminal penalties for people who interrupt you, or who create a disturbance, or otherwise, or in something of you, or the process. Those are not your Honour's only powers. Under the *Criminal Code* as well, or Code Act, it's clear that your Honour's court is a court of record.

And your Honour has powers to punish for contempt of court, more generally. In other words, things done, or things said, for which may inhibit the capacity of this court to do its work, and to do it fairly. The reason that we are rising at this early juncture of the inquest is because there has been a series of publications, principally, but not solely, by the Northern Territory Independent. The Northern Territory Independent, as we understand it, is an on-line publication, which contends that it is a newspaper.

The Northern Territory Independent has published article after article, frequently quoting the father of Zach Rolfe. And what troubles us about these publications, is not that they're adopting a particular stance, the Northern Territory Independent, Richard Rolfe, anyone else is entitled to take a position, and to express it robustly. There's no harm in that. But, if a publication, or more particularly, a series of publications, crosses the line, into derogation, vituperation and attempted intimidation, we say to your Honour that there's a problem.

And we say that is exactly what has been happening with the Northern Territory Independent, on multiple occasions. We'll draw your Honour's attention to a handful of those. We'll hand up the – what we say are the offending publications to you. And make them available to the whole Bar table. And then we'll pass two issues, where we say, there's been a breach of non-publication orders. This can be done briefly. We make those materials available to you, and to all members of the Bar table.

I refer to your Honour, and these can be looked at in due course - - -

THE CORONER: Yes.

MR FREKELTON: - - - two campaign, can I used the word advisedly. A particular person who's been the target of the campaign, which appears to be a combined campaign, on the part of Richard Rolfe, and the Northern Territory Independent. The relationship between the two of them, we don't know anything about. And we propose not to speculate about it. But, a target of this has been Sergeant Julie Frost, who, as your Honour will know, was the sergeant in charge of the police station at Yuendumu, at the relevant time.

Richard Rolfe has said on 16 August, published in the Northern Territory Independent, "If any other police officer on the planet had been the officer in charge at Yuendumu, then Walker would be alive today." He's described her recounts of matters as "A litany" of lies." This your Honour, is not constructive, or accurate reporting. On 22 August, in the Northern Territory Independent, two other members of the police force were described as having joined former Yuendumu Officer in Charge, Julie Frost, in having Constable Rolfe banned from the Northern Territory police offices.

This again is a less than accurate portrayal of the communications which have taken place between those looking after the interests of Mr Rolfe, and senior members of the police force. In the same article, Richard Rolfe is quoted as having told the Northern Territory Independent "That the move to ban Zach from attending police premises, based on the claims of three officers who worked to pin the charge on him, was disgraceful, and symptomatic of a police executive who lied and withheld evidence and tampered with witnesses."

On 2 September, the Northern Territory Independent made reference to other matters involving Sergeant Frost, and to a report. And said that "She had put the lives potentially of health staff in jeopardy in an attempted deception against the community of Yuendumu, and told Constable Rolfe and other officers, to turn off their body-worn camera, about an hour after the death of Mr Walker." On 2 September too, the Northern Territory Independent published an opinion by Mr Rolfe.

Again, the attack target was Sergeant Julie Frost. And it was said that she refused to provide any first aid to Kumanjayi Walker, despite being the most medically qualified person on the night. On 22 August, there was reference to Sergeant Andrew Barram, who was portrayed as having written, "A completely biased and inaccurate report about the shooting, an attempt to portray Rolfe as a bad cop, and it was a desperate and unethical attempt to ruin a good cops reputation."

In another publication, not this time by the Northern Territory Independent, it was stated that Richard Rolfe said the following. "I believe Police Commissioner Jamie Chalker has done everything possible to push Zach to commit suicide, by deliberately isolating him from his peers." These are inflammatory, and for the most part, utterly in accurate portrayals. They're incompatible with responsible journalism, and they're such as to have a significant impact upon a persons who are required to give evidence before your Honour.

Already, the impact upon Sergeant Frost is such that we will be asking of your Honour, that you permit her to give evidence remotely. Your Honour might well conclude that the purpose of this campaign, is to intimidate persons who are not sympathetic to the position being promulgated by Richard Rolfe, perhaps on behalf of his son. From talking the truth that we've been speaking about this morning. That troubles us, your Honour, because we are not here to hide the truth. Each member of the Northern Territory Police Force required to give evidence, will be in that witness box, and will tell you the truth. And they can be cross-examined by anyone here.

What we ask, is that this process is not distorted, and that there be simply fair reportage of what takes place. We've entered a new juncture. We've moved from the preparatory lead-up phase of this inquest into the evidence now. But what we say to your Honour is that we're not making an application in respect of this conduct, deeply troubled though we are about it, but we will. As soon as there is false reporting, by any media outlet of what takes place here, we will be drawing it to your Honour's attention, and we may well ask your Honour to exercise your powers.

And it seems to us, for us to put everyone on notice of this position, is the right thing to do at this early phase of the inquest. There's been a second issue, your Honour. You made orders on 12 August of this year, which are characterised as short minutes of order. And again we hand those up to your Honour. Your Honour will recall them. And they're headed "Non-publication, non-disclosure order interim." You made those orders pursuant to s 43 of the Act. And the – there are two relevant parts to those orders.

The first is in the first paragraph. That there be no disclosure or other publication of the contents of the brief of evidence, including audiovisual, audio material as sent out in the index to the brief of evidence annexed to these orders, and marked as Annexure A. The Annexure A, is of course, the brief, as it existed, as of 12 August 2022. That brief is now considerably more substantial. And I'll say something to your Honour about that presently.

Now, your Honour, I again unfortunately have to mention for Northern Territory (inaudible) and we provided to you and distribute those at the bar table various publications, specifically in respect of what we say are breaches of a non-publication order.

I can refer to these collectively and because in a series of publications, the Northern Territory independent has referred to and quoted from what it calls, "the draft Pollock report", which is in fact a series of drafts generated by Superintendent Pollock who handed over in due course to Superintendent Propter who reported to yourself.

Now, those matters undoubtedly will be the subject of some evidence in due course and there's no issue or problem about that. The difficulty is that the Northern Territory independent has referred to and quoted repeatedly from these draft reports, using those quotations as a vehicle to attack a variety of individuals and persons

within the Northern Territory Police Force.

Now, your Honour undoubtedly made your non-publication order for a reason. We supply ask that this be respected, because when you make orders of that nonpublication, those are treated with contempt and I use that word deliberately.

It completely undermines the process and the rationale for your making these orders which are really important in terms of what can be brought to the community's attention at any specific period in time, because there are matters on the Inquest brief which may ultimately not result in evidence. They might, they might not.

But your Honour no doubt makes these orders in order to protect people and the process from being the subject of publication prematurely. Your Honour has been thwarted in that and thwarted repeatedly for a particular agenda which has been run by the Northern Territory independent.

Your Honour, we do not at this stage ask that you do anything about it. But again, we're saying to you really clearly, that if this continues, we will be asking you to exercise your powers and to do so robustly so as to maintain the integrity of your process and so that this Inquest works, not just efficiently, but justly for all concerned.

I said I would say something further about your Honour's orders, these were orders that were linked to the date of 12 August of this year. The brief is now much larger and we respectfully suggest that there needs to be another interim order and there may need to be other ones in due course that incorporate all of the materials that are upon the brief of evidence as of now and undoubtedly there will be more material, so your Honour might need to amend it from time to time.

HER HONOUR: Yes.

DR FRECKELTON QC: Thank you, your Honour. That is all that we have to say for the present, but we hope that that will be constructive and may result in fewer problems from now on.

HER HONOUR: Dr Dwyer?

DR DWYER: Your Honour, I haven't had an opportunity to read all those articles and I'm certainly not going to comment on everything that Dr Freckelton has said. I understand that what he is – that the purpose of his comments to your Honour are not to ask your Honour to make an order at this stage, but rather perhaps to ask your Honour to urge the media at this stage to focus on fair and accurate reporting.

And may I say this at the outset, I too as counsel assisting, your Honour, urge the media to report in a way that is fair, accurate, calm and reasonable so that the people of Australia can understand what happened in this case and what can be done, if possible, to avoid this tragedy in the future.

One thing that is particularly disturbing, in my respectful submission, from what Dr Freckelton brings to your attention, is the attack on individuals who will be witnesses in these proceedings. Because it is extremely important that witnesses feel comfortable to come to this court and to tell a true story.

And that includes Warlpiri people, Luritja people, all the Aboriginal people so affected by this terrible tragedy and it includes Constable Rolfe and it includes other police officers, and it includes Sergeant Julie Frost.

And I will just comment on one thing that Dr Freckelton drew to your attention. I haven't read the article, so I don't know where it comes from myself, but Dr Freckelton says that these words were said by the father of Constable Rolfe:

"To suggest that Sergeant Julie Frost refused to provide first aid to Kumanjaya is, on the material I have seen so far, patently false. Sergeant Julie Frost was a nurse prior to becoming a police officer, but she had not practised as a nurse for something like 14 years. She had been a police officer with experience for a long period of time.

We will see that after the tragic shooting of Kumanjaya, the CCTV footage in the police station shows that he was being ably assisted in terms of first aid by officers Rolfe and Kirstenfeldt who had advanced first aid training because of their particular experiences in the army.

And I anticipate suggesting to your Honour that they were doing what they could do at that stage to try and preserve Kumanjaya's life, but of course, his injuries were too severe. Sergeant Frost was busy at that time arranging an ambulance to come, updating senior police officers and doing what she could do assist in the circumstances.

I anticipate submitting that to your Honour. No doubt, your Honour will carefully, fairly consider all the evidence before you. But that was just one thing I heard in what Dr Freckelton said to you that gave me genuine concern. I am aware of an application by Sergeant Frost to give her evidence via AVL because she has felt –

I won't speak for her, but intimidated and concerned by the articles suggesting that she has done something improper.

So, all I can do as your Honour's counsel assisting at this stage in the absence of an application, is to urge reporting that is fair and accurate. Reporting that is blaming of individuals, that is adversarial or that is inflammatory, is the exact opposite of what we try to achieve in an Inquest where this court – and I'll say this in my opening, urges witnesses to come and feel comfortable to tell the truth.

To come and feel comfortable if they've made a mistake and they think they should have done something differently in the circumstances. If witnesses think that we can learn from this so that this tragedy – these tragic events are not repeated, then we urge them to come and feel comfortable saying, I should have done something differently on reflection.

And they may not feel comfortable to do that if they have been attacked beforehand. So, that is why we urge the media to be responsible. I don't name any particular outlets because I haven't read those articles myself. But we heard from Mr Hargraves this morning that, "We strive for a safe community" and your Honour echoes those words.

And they are things that everybody wants; yapa and kartiya are joined, I will be respectfully suggesting in my opening in the goal of wanting to make sure that nobody loses their life again in these circumstances. And we heard Mr Edwardson say, this is a tragedy for Kumanjaya and the community and a tragedy for Constable Rolfe and we do not want this tragedy to be repeated.

And all Australians want a fair and accurate understanding of what happened so that these proceedings can be fair and objective and can allow for procedural fairness. That is my obligation as counsel assisting, to ensure procedural fairness and no doubt, it's at the forefront of your Honour's mind.

HER HONOUR: Thank you, Dr Dwyer, for explaining that so carefully and in a way that everyone can understand. We're here examining a number of issues. They are complicated issues. They are complex. We have set aside three months, all of us, to try and work through these issues in a meaningful way.

To jump to conclusions or positions at a very early stage in this process undermines the process. The institutions that we're considering are entrusted with significant powers and those powers are held in check by the (inaudible) significant duties, obligations and by accountability. This inquest has its own power to inquire vigorously and fearlessly, but that power is checked by its duties to be neutral and fair to all parties. The family and broader community and the institutions are entitled to the scrutiny and process that this inquest brings.

The non-disclosure orders are designed to protect the fairness and neutrality of this process and to ensure it is a safe place for witnesses to speak openly and truthfully. Anything less would be contrary to the administration of justice. The inquest is occurring in public. We are endeavouring to make it easily accessible to the affected families, to the greater public and the media.

I am also hopeful that all parties are here in good faith, applying their best endeavours to ensure this process is vigorous, but fair. The parties are represented and they will have an opportunity to examine and inquire into all the evidence that is presented. The represented parties are the families of Kumanjaya Walker. Constable Rolfe is represented; the police force, the Department of Health, the Parumpurru Committee, the police association and NAAJA. Each of these parties deserves that the fair process offered by this inquest is protected and respected.

I do expect that the orders that are made are complied with and not simply because they are orders, but out of respect for the process and all of the parties who are undertaking in this process.

I will consider further non-publication orders and make a ruling on that as well. But we'll adjourn now for lunch.

Sorry?

A PERSON UNKNOWN: Can I just ask what time, your Honour?

THE CORONER: A quarter past 2:00.

LUNCHEON ADJOURNMENT

RESUMED

DR DWYER: Your Honour, just before I commence my opening, I note that we have had some comments that there are difficulties hearing, your Honour, on the live stream. I think everybody can hear your Honour in court and I just reassure anybody listening on the live stream who may have had difficulties hearing your Honour that your Honour opening reflections will be on the website, so they can be read at any later date in the future.

Ultimately, my opening, I think, will also be in the website, but it will otherwise be available. But I'm quite loud and - - -

THE CORONER: Well, hopefully, everyone can hear, whether they're in court or listening remotely.

DR DWYER: Thank you, your Honour. I'll just turn slightly, so I don't always have my back to the family, but my apologies in advance for my (inaudible).

Your Honour, Kumanjaya Walker was born on 13 October in the year 2000 and, for most of his life, he grew up in Yuendumu, a Warlpiri community on the edge of the Tanami Desert, 290 kilometres northwest of where we are now, Alice Springs, or Mparntwe, the land of the Arrernte people.

On behalf of Patrick, Maria and myself, I recognise that we are on Arrernte land. This is and always will be Aboriginal land and I thank the Arrernte people for hosting us for the duration of this inquest.

Kumanjaya was given two first names when he was born and they will be formally recorded at some time in the written findings, but when we speak of him in this court, we, including all parties at the Bar table, will use the term Kumanjaya or Mr Walker, in order to respect the Warlpiri custom of not referring to the first names of those who have passed away, unless and until such time as the family say it is appropriate.

Kumanjaya was only 19 years old when he passed away in tragic and shocking circumstances. Much of this inquest will focus on the last days of his life and some of the evidence will cover difficulties he experienced in his life and his contact with police and courts. But this court does not forget that while your Honour sits to hear that evidence Kumanjaya's family and community will be thinking of the person who they knew and loved over his 19 years, from the time he was a baby, through adolescence, through his participation in any ceremony and communities, and into manhood, and in this court, we will never forget that we are hearing evidence about a young man who was deeply loved.

We will continue to learn more about Kumanjaya's life in this inquest, but it is clear that he has a large family who are devastated to have lost him. Some of them are here in court; others are listening to the livestream that the court has arranged to be played with the assistance of the youth service WYDAC in Yuendumu, and

I express my gratitude to WYDAC for arranging that. Some are listening in their homes in other communities. I pay my respects to them and to all of Kumanjayi's family and community and to all Aboriginal and Torres Strait Islanders listening today.

The direct and ripple effects of Kumanjayi's death cannot be underestimated. For his family, his death has clearly left them with a deep, personal grief. The broader community too is hurt and grieving. That is evident from what we have heard this morning and from what families have said publicly before, during and after the trial of Constable Rolfe.

Kumanjayi's cousin, Samara Fernandez-Brown who we heard from this morning and will hear again from during the course of this inquest explained it to us like this when she had an interview. She said:

"When I have an interview Triple J, they asked, 'How do you want him to be remembered?' I said, 'As a person, you know, as a person, as a brother. He is a cousin, he's a brother, he's a grandson, he's a partner, he's a human.' It's not the kind of thing you can read about and disconnect. He's a person. He's a human in people's lives."

"People are hurting because of this loss. People are mourning, and not just Warlpiri people, all mobs. We are all hurting because we are a collectivist nation and, when one hurts, we all hurt. So, that's the thing. You don't get read about it and disconnect because these are human beings. We are human beings. We are individuals that are in pain and just because you are not directly impacted doesn't mean you get to disconnect."

Lottie Robertson, a Warlpiri elder who is the grandmother of Kumanjayi's partner, Rakeisha and was close to Kumanjayi concludes her statement by saying this:

"I don't know the man who took Kumanjayi's life. I don't know what he thinks about what happened. All I know is that Kumanjayi's life was taken by this stranger using a strange weapon. His life was taken in a way that is foreign to our culture. I worry about what this means for the future of our young people and whether this could happen again."

I anticipate that your Honour will receive evidence from some in the family and community, but they are exhausted by their grief and that it has triggered other emotions, including fear and anger. I expect your Honour to have information that the grief and pain can sometimes make it hard for family members to participate in the inquest process. On behalf of the court, I thank the families and their representatives for their engagement so far under these very difficult circumstances and I say to them, we will do whatever possible to call evidence in a way where all the people who need to be heard can be heard and so that we can get to the truth, straight-talking, in a proper way, or jungarni.

For the service providers in Yuendumu, I expect your Honour will hear that life has become more difficult because of the fallout from Kumanjayi's death. Many of the young people, for example, feel angry and sad. For local police, there are serious challenges to rebuild the community's trust.

Early in these proceedings, your Honour will hear from the officer currently in charge of the station at Yuendumu, Sergeant Anne Jolley, who has lived and worked at the community at different stages of her life and was stationed there again soon after Kumanjayi's death. I expect that Sergeant Jolly will give evidence that it is imperative that local people feel a sense of trust in their local police, in order to feel comfortable reporting incidents and to be open and honest about what is happening in any given situation.

I expect that your Honour will hear evidence that the death of Kumanjayi has eroded some of that trust. And it has taken a long time to get back to normal. For example, your Honour, I will tender a statement from Cherylyn Napangardi-Granites, who was born in Yuendumu, and is a celebrated artist and broadcaster.

It includes these words. "Before the shooting, I thought the local police were okay. It took a long time to get close to normal with police in the community. Everything changed after the shooting. I don't know if I can trust police anymore." For most of this inquest, while the evidence is being heard, while people share their stories, and emotions may be stirred, Sergeant Jolly will be in Yuendumu, with her police colleagues, with a job to do, to serve and protect the community. To try to restore an hold that trust. She and her colleagues will have that job to do, long after this inquest concludes.

Constable Zachary Rolfe, who was charged with murder within days of the shooting of Kumanjayi spent two years suspended from work, waiting for his trial. He and his family, have been vocal about the impact on Constable Rolfe, and on them, of him being charged. For the police force of the Northern Territory, there is no denying that the fallout from Kumanjayi's death, including the charging of Constable Rolfe, has prompted a strong and emotional response. It is apparent that there are different views within the organisation as to the appropriateness of the investigations that followed.

Some of that has played out in the mainstream media, and on social media, as your Honour has heard before lunch. The impact of Kumanjayi's death is not surprising, given the tragic events in Yuendumu on 9 November 2019. And given the colonial history of this country. In a stable and robust democracy, there will always be room for different views, as to how best to respond to such a shocking event. But this inquest must, and will, be conducted in a way that is genuinely enquiring, sombre, thoughtful, and respectful of those so deeply affected.

In particular, we acknowledge that a young man lost his life. And I will not attempt too much of the rich and beautiful language of Warlpiri in this inquest. I'm too ignorant to do that, and I know too little. But I'm told by means of the community that the way I can express pain, and the pain I view personally, is nudjina wadjumba(?).

I am so sorry for you, and so sorry for your loss for this young man. This court has a role to play in making recommendations to try to ensure that tragedy is not repeated in any community in the Northern Territory.

I will shortly outline the circumstances leading up to Kumanjaji's death. But before I do, I propose to say a few brief things about the process that this court is engaged in. And I do that not of course for your Honour's benefit, but for those listening in. Your Honour's role is governed by the *Coroners Act* Northern Territory. At the time that Kumanjaji received his fatal injuries, police were attempting to arrest him, and to place him into custody. That means that his death is a reportable death, under the provisions of s 12 *Coroners Act*.

And it means, in effect, that this inquest must happen. Protocols introduced as a result of the 1991 Royal Commission into Aboriginal Deaths in Custody, mean that an independent officer, outside the command where the involved officer, Constable Rolfe was stationed, was appointed to investigate, on behalf of your Honour. In this case, your Honour has had three very experienced senior police officers who have headed the investigation. They are, in the order that they were appointed, Superintendent Scott Pollock, followed by Commander David Proctor, both of whom have now retired, and now Detective Superintendent Lee Morgan.

Superintendent Morgan is in court, and will be for the majority of this inquest, to assist with the investigations. As Commander Proctor stated in his final report, "A coronial investigation was undertaken on behalf of, and at the direction of, the Coroner. It has two principle objectives. To investigate the circumstances surrounding the death of Kumanjaji, and to investigate and report, on the actions of police and other agencies, to assess whether they could be improved. With the ultimate aim of ensuring, that no tragedy occurs again in these circumstances."

But evidence in this inquest doesn't just come from the investigating officers. It is also gathered by members of your counsel assisting team, who had arranged for some further statements, and information, to be added to the brief. And I can say, your Honour, that those in your team have been contacted sometimes by people from Yuendumu, and outside of the community, or people who have previously worked in Yuendumu, who have offered to provide statements, and then have done so. And those statements form part of the brief of evidence.

Evidence also comes from parties at the Bar table, who have been invited to take statements from relevant witnesses, and to offer up expert evidence that they think is relevant to your enquiries. That evidence too, will be added to your brief of evidence, and ultimately tendered. I expect that the brief will include records of interview, with around 100 police officers. Around 100 community members and civilians, and more than a dozen experts, covering fields including psychiatry, anthropology, police use of force, youth diversion, and community mediation work.

The brief also includes the transcript and exhibits from the trial of Constable Rolfe, so that your Honour can rely on that evidence. And it means that much of the evidence may not need to be traversed again. Although of course, your Honour

looks at that evidence from a different perspective. It includes the oral evidence of witnesses called in these proceedings, over the next three months. A Coroner investigating a death, must make formal findings about the name of the person who passed away, when, and where they passed away, and the medical cause of death.

And those questions are likely not to be difficult in Kumanjayi's case. Where a Coroner holds an inquest into the death of a person in custody, the Act provides, that the Coroner must investigate and report on the care, supervision, and treatment of the person, while they are being held in custody. And I'm using the language of the Act there, so that it's a directive to your Honour, that your Honour must investigate those things, and you may investigate, and report, on any matter, connected with public health or safety, or the administration of justice, that is relevant to Kumanjayi's death.

That gives your Honour a broad scope to investigate, and make findings. The fact that an inquest must be held when someone dies in custody, is a reflection of how important it is, in our society, to scrutinise the actions of those with enormous power, like the police force. Much of what police do in the course of their duty is not visible to the public. And the Coroner's independent review of the circumstances is an important safe guard against complacency or neglect, or even misuse of police powers.

In his report to the Coroner, Commander Proctor wrote, "Police and communities they serve have an unspoken contract, to serve and protect, and to maintain peace and wellbeing. Police are given authorisation to use coercive and even lethal force in certain circumstances. With this authorisation, comes an expectation that police will be accountable for the use of force." The Coroner's court is a creature of statute. And your Honour's role is created and determined by the Act. So it's clear then, that although your Honour has broad powers of enquiry, they are not unfettered. They are created by the Act, or governed by the Act.

So the Act says, "That a Coroner must not include a finding, or a comment, that a person is, or may be guilty of an offence." And that's s 34(3). "The *Coroners Act* may report to the Commissioner of Police, and the Director of Public Prosecutions, if the Coroner believes that an offence may have been committed in connection with a death that's being investigated. If such a report is made, a Coroner will order that part of the proceedings or evidence given, not be published, if it would jeopardise the right to a fair trial. That means that the right to a fair trial, which is a fundamental right in this country, is preserved and must not be jeopardised by an inquest where the rules of evidence don't apply.

Well, what I'm about to say is not controversial, but I am making it explicit to assist the community to understand the coronial process. Had Constable Rolfe not already been charged with criminal offences relating to Kumanjayi's death, including murder and manslaughter, that section likely would have loomed large in these proceedings.

Your Honour would have had to carefully consider whether, and if so when, a

threshold had been reached for a report to have been made to the Commissioner of Police and the Director of Public Prosecutions. In these circumstances, however, where Officer Rolfe has already been charged with criminal offences and was found by a jury to be not guilty, referral for the DPP is no longer an issue for the coroner.

And I thank Mr Boe for mentioning that this morning when he spoke on behalf of his family. So, the function of this court is very different, of course, to the function of the criminal court. The issue of whether Constable Rolfe's actions were illegal can't be revisited.

There are double-jeopardy laws in the Northern Territory that prevent a further retrial of Constable Rolfe on those offences. However, this court must scrutinise his actions and the actions of other officers involved in the events that lead up to an surround Kumanjayi's death.

And this court must scrutinise Kumanjayi's treatment in the station afterwards in order to report on the care, supervision and treatment of Kumanjayi while he was held in custody and to investigate and report on matters connected with the administration of justice relevant to his death.

Prior to the directions hearing on 26 May of this year, an issues list was distributed to parties which nominated seven broad issues under consideration. It was made clear that the list is not a pleading and does not bind or limit the coroner. But it is to provide assistance to the parties.

The seven broad issues or topics are these. What are the circumstances of Kumanjayi Walker's death? The deployment of the immediate response team or the IRT. Why did that happen and in what circumstances? Issues relating to recruitment, training and supervision within the Northern Territory Police Force.

Number four, the conduct of this coronial investigation. And that includes whether anything was done to compromise that investigation. Number five, the departure of Yuendumu Medical Centre staff. Why did that happen and when did that happen?

Number six, some broader issues in policing, including the policies around police using guns, carrying guns and use of force. And number seven, the important topic of diverting young offenders or young people with trouble from interaction with the police and criminal justice system, so that we can avoid negative encounters in the first place.

Your Honour, under each of these broad issues on that list, there are question posed by way of example of what will arise under that issue. There are in effect 54 questions then on that issues list. The issues list was developed in consultation with parties.

Prior to 26 May of this year, a draft of the issues list was distributed by counsel assisting and there was a timetable for written submissions. In a constructive way,

interested parties, including the families, NAAJA, Northern Territory Health, Northern Territory Police Force suggested adding, deleting or amending the original draft.

Initially, lawyers for Constable Rolfe suggested that they would object to certain questions being raised, but ultimately, the objections were withdrawn prior to the directions hearing. All parties with leave to appear at the directions hearing on 26 May agreed to the list.

Last week around four working days before the inquest commenced, lawyers acting on behalf of Constable Rolfe sent correspondence to counsel assisting indicating that they now object to the court hearing evidence about a significant number of the questions which appear on that issues list.

On behalf of Constable Rolfe, they object to 13 questions, all of which fall under two issues. Either the issue of recruitment, training and supervision within the Northern Territory Police Force or the broader issue of regulating use of force. For example, Constable Rolfe has foreshadowed an objection to evidence relating to the issue or question of whether he provided accurate and honest information during his recruitment to the Northern Territory Police Force.

He objects to your Honour hearing evidence on the issue of whether some police officers in Alice Springs discriminated against Aboriginal people or had a negative attitude to community police. And whether, in effect, that increased the chance of the use of force on 9 November 2019.

I anticipate from the correspondence sent to counsel assisting that he objects to your Honour enquiring whether there is evidence of systemic racism or cultural bias in the Northern Territory Police Force and whether that was, in any way, relevant to the events on 9 November 2019.

I anticipate from that correspondence that objects to your Honour hearing evidence in relation to Constable Rolfe's use of force history and whether any inappropriate behaviour has been condoned, overlooked or excused by supervisors.

He disputes that this may be relevant to your Honour's power to make findings or recommendations. It is a great shame that those objections came so late. It is a great shame that those objections came so late when so much care was taken by those assisting your Honour to list this matter on a number of occasions previously so that these issues could be identified and understood by all members of the community.

And particularly, by Kumanjayi's family, Warlpiri and Luritja and the people of Yuendumu. I would have more to say about that on Friday, because on Friday, your Honour has listed for legal argument the topic of the scope of the inquiry and any issues that are raised on behalf of Constable Rolfe, as foreshadowed in that correspondence.

For now, for the purposes of my opening, at the relevant point, I will identify any

issues that will be the subject of objection by Constable Rolfe and save any detail of that evidence until after your Honour has made a ruling. With respect to those issues or questions in dispute, if your Honour rules that they are within scope, I will do a further short opening on those issues after Friday.

To be clear, it is the position of those assisting your Honour that the original issues list and the 54 questions under it which really shape and foreshadow how those issues might be enquired into are within scope. But your Honour will no doubt listen very carefully to the arguments against my position and then hand down a ruling after giving full consideration to all of the parties at the bar table who wish to be heard on that matter.

It has already been said today that the aim of this inquest, as in all inquests, is to get a truthful, frank and full account of what happened in the lead up to Kumanjayi's death to determine if there was an opportunity to do something different that may have preserved his life.

To that end, witnesses are encouraged to be as honest, as self-reflective and as open as they can be. Ideally, an inquest is an opportunity for interested parties to listen to the witnesses carefully and to each other with an open mind. It is, for example, an opportunity for Kumanjayi's family to hear from police and NT Health about what efforts they have made since Kumanjayi's passing to prevent it from happening again.

It is also an opportunity for police, for NT Health, and NT Government, to listen to the family and community about what more could be done, so that this never happens again. It may be an opportunity for family, community, and police, to forge better relationships, and to find a way to work together. And that was so clear from the powerful words that we heard this morning from Mr Hargraves, Mr Granites, and Ms Fernandez-Brown.

The extent to which that is possible, depends in large measure, on the cooperation of the parties at this Bar table, and of the witnesses. The *Coroners Act* states, "That a coroner who holds an inquest into the death of a person in custody, must", and I'm using that language again from the Act, so this is a directive to your Honour. "A coroner who holds an inquest into the death of a person in custody, must make such recommendations, with respect to the prevention of future deaths, in similar circumstances, as your Honour considers to be relevant. And the coroner must", not may, but must, "Cause a copy of each report and recommendation made to be sent, without delay, to the Attorney General."

Those sections of the Coroner's Act highlight that death prevention is a critical role performed by your Honour, as the Northern Territory Coroner. As your Honour knows, often the best recommendations come from family. Because family have an understanding of what would have helped them in dealing with service providers like clinic staff, and police, who they live with every day. And we – I said we'll hear more about Kumanjayi. I'm so grateful for the words already spoken by families, either this morning, or in their statements.

We'll hear more about him and his life throughout this inquest. And Kumanjayi was unique of course. But there are parts of his story that I anticipate will be familiar. And I expect that family and community members will have good ideas about how to strengthen community supports for their young people, to help them in similar circumstances. I anticipate they will have an important contribution to make about what would empower them in the future, to help young people going through things that Kumanjayi was going through.

On the topic of recommendations, experience suggests that good suggestions also often come from staff working within an institution, like police, or health, or youth services, who see the opportunity to strengthen community engagement, and improve service delivery. To make life better for young people in Kumanjayi's situation. And that might include, for example, more staff, better equipment, good ideas for recruitment, better training, better engagement with stakeholders. The more information and ideas this court can get from family, community, and other stakeholders, the more relevant and appropriate the recommendations that your Honour makes, are likely to be.

Your Honour has foreshadowed this question, that some people unfamiliar with this inquest process, might ask, what's the point of an inquest after a criminal trial, given that we know a lot about what happened on 9 November 2019? And I don't want to overpromise on the court's behalf, as to what can be achieved in an inquest. But I do want to explain some reasons why it can be such a valuable process. So it might be useful at this point, just to point to three other inquests in the Northern Territory, that had major impacts, and led to reforms. These are just three examples, but there are many others.

In 1998, there was a young fellow, Kumanjayi Ross. He was only 16. He was an Aboriginal boy who had been detained by police, and put into what we know is referred to in the Northern Territory, as protective custody. He was found alone at night, and he was thought to be intoxicated. This young boy was held in the cells of the old Alice Springs Police Station. And he was held alongside the general adult population.

He was so sad, that tragically, within minutes of arriving, it appears that he took his own life, and it was using a very obvious hanging point. His death led to reforms, that meant children could no longer be housed in adult cells in the Watch House, and a new facility was built, with a separate area for juveniles. The second one I want to tell you about is Kumanjayi Briscoe. In 2013, the former Northern Territory Coroner, presided over an inquest into the death of Kumanjayi Briscoe. He was only 27 years old when he passed away in a cell in the Alice Springs Watchhouse.

Again, that young man had been taken into protective custody, when he'd been drinking grog. Kumanjayi couldn't breathe properly because of the way he was laying on the mattress, with his neck pressed against a bunk, and no one was checking on him from the police station for a long period of time. The medical cause of his death was position less asphyxia, meaning he couldn't breathe, because his

neck was pressed against that bunk, and because he'd been drinking alcohol. The former Northern Territory Coroner found that there were multiple failings on the part of individual officers, and senior management in the police, that allowed that to happen.

The Northern Territory Police Force stood up at the beginning of that inquest and acknowledged those mistakes, and committed to reforms. And again, at the end of that inquest, they acknowledged the learning that had come from the inquest, and committed to further reforms. As a result of the internal police review, and the coronial process, critical changes were introduced. They included dedicated custody sergeants, nurses in the watch house on busy shifts, which had been a recommendation from the 1991 Royal Commission into Aboriginal Deaths in Custody. An electronic system to prompt checks on prisoners, so that they couldn't go for long periods of time again, without being monitored.

And a more robust medical screening process. I'm not saying that watch house is perfect now, but it led to some really important reforms, because of the way that inquest was conducted. And because of the cooperation from parties at the Bar table. And the third one I wanted to mention is a very different case, but one that also involves the tragic death of a young man. In 2016, the Coroner reported on the death of 20-year-old Ryan Donoghue. He was working on a prawn trawler when he was electrocuted, using an angle grinder on deck.

The Coroner found that there were unacceptable and indeed, shameful, work place safety regulations on a large number of Australian fishing vessels. His Honour's subsequent investigation, and recommendations, led to reforms which included replacing electrical power tools with battery ones, on deck. Defibrillators, in case somebody has an accident. Making sure everybody had EpiPens on deck. And an acceptance by the regulators that that vessel is a work place, and should be subject to more robust checks and legislation.

So although not all coronial recommendations are implemented, and some of them take a long time before they're implemented, they're just an example of inquests in the Northern Territory, where very important reforms have been introduced following the independent review by the Coroner. There will not always be agreement of course on what findings your Honour should make, or what recommendations should follow. But I can confidently predict that families and community, and Northern Territory Health, and Northern Territory Police, are united in wanting to avoid another death in these circumstances.

And to borrow what Mr Hargraves said again today, united in wanting to keep the community safer. And that – the things that unite us, were really echoed by Mr Granites, and by Samara Fernandez-Brown, so we have to work together, to try and find the best recommendations possible that your Honour can introduce.

Mr Cole, we're just going to stop me when I get to an hour, your Honour, so everybody can have a break. Before I come to the particular facts in Kumanjayi's case, I want to acknowledge that there might be a lot of emotion for people listening

to my opening, and as we hear evidence in court. The death of every Aboriginal and Torres Strait Islander in police or correctives custody, is a particular tragedy for the family involved. But it may also trigger pain and trauma, for the wider community. And Samara said that more eloquently than I ever could.

Kumanjayi's death needs to be seen in the context of Australian history. That's a history which includes colonisation, dispossession of First Nation's people, and ill-fated policies. In our history, the law has not always applied equally to Aboriginal and non-Aboriginal Australians. I acknowledge the backdrop of our colonial past and that it is has often caused hardship to First Nations people. I acknowledge how hard it is to build trust with Aboriginal people in those circumstances.

It is widely accepted by historians that in the early years of European settlement, there were massacres of Aboriginal people in different parts of the country. I expect your Honour will receive evidence that the Coniston Massacre is acknowledged as one of the last documented, state-sanctioned massacres of First Nations people in Australia and Mr Granites said the same thing this morning.

It occurred after a white dingo-trapper named Fred Brooks was murdered on Coniston station, to the northeast of Yuendumu in 1928. His body was found with traditional weapons in a shallow grave. Two Warlpiri men were arrested initially for the murder and they were held for a while in Darwin before being found not guilty. A third man who was widely suspected of being involved, called Bullfrog, was not arrested or charged.

In the weeks that followed the death of Mr Brooks, a reprisal party was formed and led on horseback by mounted constable George Murray, an ex-World War I army officer. The party was made up of both civilians and police, and over several months more than 60 Aboriginal men, women and children were killed at different sites not far from Yuendumu. These events became known as the Coniston massacre.

The consequences were devastating for Aboriginal people across the region. Warlpiri, Anmatyerre, Kaytetye, people still mourn the loss of family who were killed during the Coniston Massacre. Not one of the kartiya police or civilians was ever charged for those more than 60 killings of Aboriginal people. After some public pressure, a board of inquiry was set up to consider whether the deaths of so many Aboriginal people was justified.

The findings of the board, made public on 30 January 1929, were that in all cases the shootings were justified as self-defence and settlers or police had given no provocation. The police involved in that massacre were exonerated and reinstated. I expect your Honour to receive evidence from community members like Cherylyn Granites, that Kumanjayi's death invoked for them those memories. In a statement to be tendered in this inquest, she says: "The shooting also reminds me of the Coniston massacre that happened in 1928. That happened 100 years ago. That was horrible and sad and no one deserved to be shot in their own home where you're supposed to be safe."

Your Honour will have evidence from anthropologist and scholar, Dr Yasmine Musharbash, who has lived in Yuendumu for significant periods since the mid-1990s. I expect her to give evidence that when she first stayed in Yuendumu, there were survivors of the Coniston massacre living in the community and it has remained a scar in the minds and hearts of community members.

Your Honour, our research suggests that in the last fifty years, aside from Kumanjayi, there has been one other occasion where police in Central Australia have used lethal force against an Aboriginal person. There are two others in the Top End.

In the other occasion in Central Australia, a police officer was also charged with murder and also, on that occasion, found not guilty. That was in 1980, where Constable Lawrence Clifford, shot and killed a 44-year old Anmatyerre man called, for cultural reasons, Jabanardi.

On the afternoon of 20 July 1980, a Holden station wagon was heading to the central town of Ti-Tree, carrying eight local men. Two police officers were coming in the other direction in a paddy wagon and Constable Clifford decided to stop the Holden by activating the blue light and driving straight at the car, coming to a head-on stop about 3 metres away.

The two police officers attempted to arrest the driver for what they believed to be driving under the influence and they put two others into protective custody. The report says that a fight broke out and Constable Clifford used a non-issue weapon, a 20-inch stick cut down from a shovel handle to strike at the group. That weapon was then used against him to inflict a wound to his head. Constable Clifford went to the paddy wagon and retrieved his personal .22 Magnum revolver.

Your Honour, I'm informed that Northern Territory police were not issued with personal issue hand guns, now called Glockes, until the mid-1990s, and prior to this, members had the option of signing out a station revolver or purchasing their own hand gun. Constable Clifford used his hand gun to shoot one man in the chest at point-blank range and that man survived, but was seriously wounded.

More shots were fired by Constable Clifford, apparently in warning, before a final shot was fired at Jabanardi who tragically did not survive. J Jabanardi's death was investigated in the Royal Commission into Aboriginal Deaths in Custody and I anticipate that the report by Commissioner Elliott Johnston QC will be tendered in this inquest. The Commissioner wrote this:

It seems to me that the death of Jabinati was in many ways a turning point for race relations in the Northern Territory. The circumstances in which the tragedy arose were the subject of great public anxiety and agitation.

Five of the surviving Aboriginal people were prosecuted for serious offences and one of the two police officers involved was tried for the murder of Jabanardi and for

the wounding of a second Aboriginal man, Freddie Pepperill(?). That kartiya police officer was acquitted on both counts. Media coverage of the incident was so emotive and prejudicial that the trial of the accused Aboriginal man was transferred by order of justice of the Supreme Court from Alice Springs to Darwin.

Investigations conducted by police into the tragic events were seriously flawed, the Commissioner found. A lengthy and well-conducted Coroner's inquest inquired very closely into the circumstances. That came after the trial of the Aboriginal occupants of the car. The Coroner concluded that there was a prima facie case against the officer and, therefore, it was after the inquest that the officer was committed for trial.

Your Honour, in that case, jury verdicts were entered with determined the criminal responsibility of many of the actors in the events and those jury verdicts were brought in before the Royal Commission into Aboriginal Deaths in Custody investigation that the Commissioner was involved in. All parties, when it got to the stage of the Commission's investigation, urged the Commissioner to critically examine the practices and procedures which had changed as a result of Jabinati's death and to consider other which might further improve relationships between Aboriginal people and police, and which might ensure that such a tragedy was never repeated.

The evidence brought before the Commissioner, the parties agreed, would address the broader issues; namely, the underlying social, cultural and legal issues which his terms of reference required him to consider. The Commissioner stated that, as a result of that constructive approach adopted by counsel and their clients, he was able to address underlying issues in great depth. Witnesses were able to be examined on issues of great importance, which would enable him to make findings and recommendations which would benefit all people in the Northern Territory and would ensure that out of the tragedy of Jabinati's death would come a greater understanding and a surer foundation for positive relations.

In 1991, the Royal Commission into Aboriginal Deaths in Custody reported on 99 deaths, including Jabinati's, and released a report with 339 recommendations. Many of those recommendations have been implemented in some form, including additional police training, protocols for investigation of deaths in custody, and banning police from using non-issue weapons, except in exceptional circumstances.

Since that time, the Australian Institute of Criminology has kept statistics on Aboriginal deaths in custody. The latest report released in December 2021 reveals that, as at this time, there have been 489 indigenous deaths in custody since the Royal Commission, including 320 in prison, 165 in police custody, and four in juvenile detention. Whilst most of those deaths results from what the Institute refers to as natural causes, meaning deaths from disease or illness, some are found to be preventable deaths. These are not just statistics. These are human beings who are loved and missed.

A further issue I anticipate your Honour will hear about in the discussion of Kumanjayi's life and death is the grief caused by the over-representation of Aboriginal people in custody. The Northern Territory has the highest incarceration rate in Australia and 84 percent of its prison population is Indigenous. That means that most Aboriginal people in the Northern Territory know and love someone whose life has been affected by contact with the police and justice system.

They may have had that contact themselves. Kumanjayi spent much of his teenage life in juvenile detention and then some time in adult custody. He had many interactions with Northern Territory Police prior to the incident that led to his passing.

During the course of this inquest, your Honour will receive evidence that Kumanjayi did experience some trouble in his early years. He had some difficulty at school. There were health issues that affected him. There were issues that led to him offending. Some of his offending was violent.

That evidence is not being called to demonise or shame Kumanjayi. On the contrary, it is called in order to understand his experiences and what led him to have negative contact with police and courts. I anticipate that there will be evidence in this inquest to explain why Kumanjayi was fearful of some police and had been locked up again.

And I expect it may explain why police may have been fearful or wary of him and had reason to anticipate that arresting him involved some risk. While it's important to acknowledge that tragic history, I expect your Honour will also hear evidence of the good work of community police across the Northern Territory and for many decades.

I expect your Honour to hear important evidence in this inquest about the work done in bush communities by Aboriginal communities by Aboriginal community police officers and Aboriginal liaison officers and local police who work with the community to promote a safe environment every day.

I anticipate this inquest will hear evidence of the work done every day by police in Yuendumu to assist Aboriginal people and others in the community in their daily lives. And as Mr Hargraves said, the community, from his perspective, needs police to work together with community in a way that makes it safe for all.

One community member, your Honour, Francis Tipiloura(?) Kelly has provided your Honour with a statement which covers different topics including policing, and Francis Kelly says:

"Aboriginal community policing is the best way of managing law and order in Yuendumu, because it is built on a relationship of trust between people in the community and police. In the past, we sat down with police to talk about the differences between local and outside laws. They would teach us their laws and we would teach them ours."

The best kartiya police have been the ones who have lived in Yuendumu for a

number of years, so have come to know and understand our community. These police officers use their voices to calm situations down, which meant conflict was handled in a way that respected Warlpiri culture. The community would respect and listen to these police because they involved themselves in the community by talking and developing strong connections.”

In a statement to be tendered, Warlpiri woman, Alice Walker, who lives in Yuendumu and is the mother of Derek Williams and others, writes:

“We knew the police that are working here in the community. We knew them very well. They are good people. Most of the community respect police, if the police show their respect as well. A lot of the young fellas have respect for the police because that’s the example that elders have shown.”

I expect your Honour will receive thoughtful evidence about this from Cherylyn Granites. In her statement, she writes:

“The police officer who has been good has been Annie. She used to be the sergeant at Yuendumu. She knew everyone and was always friendly. I got along well with Annie. She lived in Yuendumu for a long time, so everyone knew her well. She would talk to people before she arrested them and would give them a second chance. She would come around and give people a warning before arresting them.

Annie would say to me, ‘I know you, Sherilyn. You’re a good lady.’ The police officers who have gotten our respect in the community have been the ones who made an effort to get to know our people.”

Over the course of the inquest, the court will hear evidence from Aboriginal and non-Aboriginal police, yapa and kartiya police who have worked in and with the community for many years in a way they found rewarding or still find rewarding. And there are many opportunities, I expect, for us to learn from their example.

Is that a convenient time to have a short break, your Honour?

THE CORONER: It is. We’ll take a 15-minute adjournment.

ADJOURNED

RESUMED

THE CORONER: Just before we resume with the opening, I have made amended non-publication orders. And Mr Coleridge is going alert everyone to what those orders are.

MR COLERIDGE: Thank you, your Honour. The amendments serve two purposes. The first purpose is simply to update the non-publication order so that it covers (inaudible) as it stood yesterday, at the last brief service. The second purpose is to effectively create another exception for evidence given during the coronial proceedings, and also to ensure that any media reporting of material that was publically available by the Supreme Court of the Northern Territory, would not be inadvertently captured by the non-publication order.

So I'll just read the amendments to the order onto the record. At Order 3, your Honour now provides:

Order 1 does not prevent the disclosure, or other publication of:

- a) any evidence given, or other discussion in open court, during the inquest.
- b), any documents, including audiovisual and audio material, that are tendered as an exhibit in the inquest.
- c) any material made publically available by the Supreme Court of the Northern Territory.

And once those have been sealed, your Honour, we'll provide them to media, and anyone else who wishes to review them.

THE CORONER: And they'll also be on the website.

MR COLERIDGE: They will.

THE CORONER: Great.

Yes, Dr Dwyer.

DR DWYER: Thank you, your Honour.

Your Honour, throughout the course of this inquest, we will hear much about the community of Yuendumu. I've mentioned that it's situated about 290 kilometres away from where we are now, north west. About three hours away by car. And to get there, you travel on mostly sealed road, along the Stuart Highway, for 25 kilometres. And then along the Tanami Road. The community that we now know as Yuendumu, was established by the government in 1946, with the stated aim being to deliver rations and services.

In 1947, the Australian Baptist Home Mission was established there. And by 1955, more Aboriginal people had settled in the township, and the population grew.

It is one of the largest remote communities in Central Australia. And while the population fluctuates, current information suggests that there are approximately 890 residents living in Yuendumu. Of these, 93 percent are Aboriginal. 46 percent are men. And 54 percent are women. Yuendumu has many, many strengths.

The community is rich in culture, and ruggedly beautiful. It is occupied mostly by Warlpiri people, whose ancestors have lived on the lands of the Central Desert for 10's of thousands of years. Your Honour will have evidence in this inquest of the deep connection of the people to the land, to the law, and the culture. And the important role played by the strong elders, over many, many centuries. Among the services offered in Yuendumu, are two community stores, a primary and secondary school, health clinic, women's and children's centre, safe house, community council, mediation centre and service, church, elderly people's home, youth centre, police station, and Night Patrol.

It boasts Warlakurlangu Arts Centre, set up in 1985, and one of the longest running, and most successful community owned art centres, with internationally recognised artists. In the early 1980's, a group of five elders was concerned about children struggling to engage with western schooling, which was conducted then in English. Those elders painted dreaming or ancestral stories on 30 doors of the school, to encourage two-way learning. Those doors were in the desert for 13 years, and they're now in the Museum of South Australia.

The school is proudly bilingual and bi-cultural. And it has kept the two-way education approach as a guiding principle, ever since. In the mid-1980's, Yuendumu was one of a number of Central Desert communities that hosted the iconic Midnight Oils tour, with the Warumpi Band. And Yuendumu features in the famous Oils song, "Beds are burning." "Four wheels scare the cockatoos from Kintore East to Yuendumu."

For 30 years, Yuendumu has been home to Pintubi Anmatjere Warlpiri media, or PAW, which produced the celebrated series, "Bush Mechanic" in 2001, and the documentary "Aboriginal Rules" in 2007, which explored the mighty Magpies Football Club, and the role of ALF in the community. I anticipate that during the course of this inquest, your Honour will hear that there are many extraordinary leaders, who have lived in, and around Yuendumu. Many who have passed on of course, and many who are still there.

I don't intend to try to name them all of course, but by way of example, in 1993, a number of elders were involved in founding the Mount Theo Program, which successfully diverted young people from the danger of petrol sniffing. I anticipate your Honour will have evidence of how the program was effective in the 1990's, and what is available now to young people, through the Warlpiri Youth Development Aboriginal Corporation, known as WYDAC, and other services in the community.

In 2007, Johnny Japangardi Miller, or "Hooker Creek" Peggy Nampijina Brown and Yapatjeri Stodgenoski(?) were awarded the Order of Australia, for their efforts in founding Mount Theo. And for services to the community of Yuendumu, and the

surrounding region of the Northern Territory, through programs addressing substance abuse, among Indigenous youth. That program grew into a number of services now administered by WYDAC. I anticipate that your Honour will hear, during the course of this inquest, there are many, many strong and engaging, clever, leaders in Yuendumu.

And there are strong, resourceful, clever people in Yuendumu, amongst their youth, and they are eager to continue the proud Warlpiri and other cultures in Yuendumu, and to see that community thrive. So in this inquest, and I don't intend to give a running commentary on the media, but of course, in the media in the lead up, there have been some stories that focused on the challenges in Yuendumu. But in this inquest, I anticipate we will hear much evidence of the rich culture, and the beauty and the strength from within that community.

I come now to Kumanjaji Walker, and some background on his birth and life, that I expect your Honour will find relevant to your enquiries. Kumanjaji was born in October 2000, in Alice Springs Hospital. A child of Selena Napatjimba Gulain(?) and Frank Walker. Kumanjaji's mother was Luritja, and his dad Warlpiri. Sadly, your Honour will hear that both of Kumanjaji's parents have passed away. I expect your Honour to hear that his parent's had problems with substance abuse, and their relationship with them broke down, soon after Kumanjaji's birth.

As a baby, Kumanjaji had admissions to Alice Springs Hospital with some physical problems, like recurrent pneumonia and gastroenteritis. When he was just eight months old, he was admitted to hospital, and diagnosed with issues related to failing to thrive because of those physical challenges. Negotiations commenced between members of Kumanjaji's family to nominate an appropriate parental carer for him. And I expect your Honour will hear about a meeting at the Alice Springs Hospital in June 2001. It was determined that Leanne Oldfield, who was then in a relationship with Kumanjaji's father, would be his primary carer. They initially went to live in Warlpiri Camp in Alice Springs.

From an early age, Kumanjaji was cared about by all sides of his extended family, even if they didn't always agree about who should be his primary carer. I anticipate that your Honour will hear that his extended family never stopped caring about him, trying to offer him assistance. And that is obvious from what your Honour has already heard.

I expect your Honour will read in the evidence in the brief that sometime fairly soon after Kumanjaji was placed into the care of Leanne, his father Frank went to live in Western Australia, and in 2005, Frank passed away. Sadly, Kumanjaji's mum passed away in 2012.

Between the ages of four and 11, Kumanjaji lived with Leanne mostly in Katherine. Around 2005, they visited Alice Springs and Yuendumu before moving back to Katherine to live at Warlpiri Camp in 2006. That meant that between the ages of four and 11, Kumanjaji was enrolled in MacFarlane Primary School in Katherine.

Initially, his teachers reported that he enjoyed school and had a good attendance record. As he got older, however, and the curriculum content became more demanding, Kumanjaya struggled to keep up with the class and he was identified as having special needs. I will come shortly to some of the health issues, including hearing problems, that are likely to have contributed to the problems that Kumanjaya had at school.

And your Honour, I do that because I foreshadowed right from the outset that those issues relating to hearing problems are ones that are connected to the difficulties Kumanjaya had and they reinforce the importance of tackling those sorts of physical issues from an early age and putting the resources in to help young people in Kumanjaya's position.

I expect your Honour will find evidence that there is no doubt Leanne had a very strong bond with Kumanjaya. She loves him dearly and she no doubt tried very hard to care for him. I expect your Honour will hear that unfortunately when Kumanjaya was young, Leanne was the victim of serious domestic violence from her former partner who she and Kumanjaya stayed with.

And I say that not, of course, to shame anybody, but just to try to understand what it was like for Kumanjaya growing up and some of the challenges he had, even though there was a lot of love there. There is likely to be evidence in this inquest that the early exposure to some of that violence and alcohol from people in the community, some people in the community, had a negative effect on Kumanjaya.

And I expect your Honour will have evidence from independent psychologists and social workers that that may even have impacted on his cognitive development. When Kumanjaya was 11 years old, he moved to South Australia with Leanne before coming back to Yuendumu at the age of 12.

I expect your Honour to hear evidence that during that time, Kumanjaya was also often cared for by members of the Brown, Lane and Walker families. On 8 October 2013, when he was just 13 years of age, Kumanjaya was enrolled in the Yuendumu school.

I expect your Honour will hear that he stayed there for just about a year because the following year after he was enrolled, he reported that he was teased by other kids who had called him crazy since he was little. No doubt, they didn't understand some of the challenges that he was experiencing.

Kumanjaya struggled with the work. I expect your Honour will read that there were occasions when he acted out, even aggressively, towards other students sometimes and that resulted in the teachers asking him to leave the school grounds.

In a court report that your Honour will have in evidence from 2017, the headmistress explained that the school did not have the services and resources that someone like Kumanjaya required and he would benefit from one on one support,

which was not then available at Yuendumu.

And I raise that at this stage, your Honour, just to invite some reflection about what would help young people in this position at that stage and what might have helped him, if we have a headmistress at that stage saying, he needs one on one support, but she couldn't get it for him.

Kumanjayi received some further education when he attended school in youth detention or residential care. Your Honour will have records that show that in Don Dale Detention Centre, he did do some schooling at the Tivendale School and at the Mt Theo diversion program, he attended School of the Air.

And I expect your Honour will have evidence that Kumanjayi did much better when he was in a structured environment, but also with the supports that he needed to help him. As I foreshadowed, one of the issues that your Honour will have evidence of is Kumanjayi's underlying emotional and physical health and how that is relevant to him coming in contact with the police.

From the age of about 13, Kumanjayi was open and honest about his substance abuse. He disclosed to a number of people that he had some issues with alcohol, even petrol insolvent sniffing and cannabis. By the time that Kumanjayi was 17 years of age, he reported to those trying to help him that he was dependent on cannabis and he needed some help for that.

Again, when I talk about Kumanjayi having troubling with petrol or gunja or grog, that is not to blame him or in any way to encourage ill-feelings towards him. On the contrary, it is so that we understand what was troubling him and if there was more that could have been done to help him and to help others in his situation.

The evidence of Kumanjayi acting out or getting angry is in sharp contrast to how he was family when he was, for the most part, calm and happy. Kumanjayi's family remember lots of good times that they had with him. For example, your Honour would have the evidence from Alice Walker, Kumanjayi's aunty.

And I expect her to say that when Kumanjayi was young and Leanne brought him to Yuendumu, he loved all of his sisters and cousins. He would come and sit with Alice and her sister and give them a big hug. She says, "He had a big heart." And in her statement, she tells your Honour:

"He had a lot of love for the community and family. He would be running around playing with the family's little ones, swimming in the swimming pool with little ones, giving them cuddles. He was a happy boy. After he became a teenager, things changed because he had a bit of a breakdown and was sniffing a bit of glue and spray. He was respectful and he wanted to be better, but he would easily get into trouble when he was in the wrong crowd."

Your Honour will be interested to hear the reflections of all of Kumanjayi's family who wish to share their thoughts, either on paper or through video form or in person.

Some of those members of the family have provided videos and I thought it might be nice for the court to hear from one of those people now. And this is a video from Roxanne Lane, your Honour.

DVD PLAYED

DR DWYER: Your Honour, we can watch that again at any time, parties who want to focus in to what we're told by Roxanne, but she has talked to us there about a connection that Kumanjayi had with her family and they got to know each other really well. They took him to swimming hole, rode horses together, did bush trips together and she spoke of Kumanjayi's love of dogs, the same as his little brother.

I expect your Honour will hear evidence that Kumanjayi's physical and mental health and his behavioural issues are likely to be linked and they help us to explain why he could be different in some settings and why people who didn't know him would find that particularly challenging. Like many young people in the Northern Territory, particularly young Aboriginal people, hearing difficulties had a significant impact on Kumanjayi's capacity to learn and, as your Honour will hear, on his behaviour.

I expect that the evidence from his Auntie Alice, that Kumanjayi was partially deaf and this affected his self-confidence and he tried to fit in, she thinks, by misbehaving. Your Honour will be well aware that ear disease and associated hearing loss can have long-lasting impacts on education, well-being and, ultimately, employment prospects.

In 2020, a spokesperson for the Top End Health Service said that Northern Territory Aboriginal children experience among the highest rates of otitis media, an infection of the middle ear, in the whole of Australia. The final report, your Honour, of the Royal Commission into Aboriginal Deaths in Custody, reporting in 1991, also recorded the relationship between childhood ear disease, hearing loss and poor school performance and the connection between those conditions and the involvement in the criminal justice system.

That evidence was called again in the Royal Commission into the Treatment of Children in Detention and Out-of-Home Care in the Northern Territory, which reported in 2016. Rather than recall expert evidence about that, I anticipate tendering the evidence from previous inquiries in this inquest and then updating it with current efforts to try and address those health issues.

I have already stated that Kumanjayi's experienced trauma when living in a house where there was domestic violence and I expect your Honour will hear evidence that the trauma that he experienced early in life impacted on his mental health and intellectual development.

On 2 May 2017, a forensic psychological assessment was completed by psychologist, Kate Crawley, at the request of a judge in the Alice Springs Youth Justice Court. In summary, the psychologist, Kate Crawley, concluded:

First, that Kumanjaya had a cognitive impairment, not a mental illness.

Second, he likely suffered an intellectual disability of mild to moderate severity which required further investigation to determine what needed to be done to assist him.

Thirdly, his intellectual disability could be attributed to a range or combination of things, including exposure to alcohol and petro-chemicals while in utero, premature birth, neglect issues as an infant and into early childhood, failure to thrive, and prolonged exposure to trauma.

Fourthly, he also likely suffered trauma as a young child due to his exposure to adult intoxication, neglect, overcrowding and violence which is known to have a wide, but varied impact on a child's behaviour, and on their social and emotional functioning.

Ms Crawley made a number of recommendations to the Youth Justice Court which your Honour will, no doubt, be interested to consider. They include that therapeutic programs or other residential conditions should be close to community and family to whom he has significant ties and that finding appropriate and meaningful employment was important.

Ms Kerri-Anne Chilvers worked with Kumanjaya for seven years, between 2013 and 2019, and she came to know him through her different roles. Firstly, she worked as a social worker and then, ultimately, to when she worked with Kumanjaya as a qualified psychologist. Ms Chilvers has provided a comprehensive statement to your Honour, outlining her professional and personal interactions with Kumanjaya and his family right up until close to the time when he passed away and I anticipate that she will be an important witness in these proceedings.

I expect Ms Chilvers to give evidence that her current research on trauma and the effects of trauma on the brain and behaviour was inspired by Kumanjaya because she was committed to understanding his situation and to providing appropriate therapeutic treatment for him in whatever way she could. I expect to submit to your Honour that she obviously cared for him a lot.

Kumanjaya presented to her with symptoms of hyperarousal, including difficulties falling asleep, irritability, and occasional outbursts of anger which were usually triggered by being teased. He had difficulty concentrating, he was distractable, and hyperactive and hypervigilant. She says he had poor impulse control and an exaggerated startle response and all of those symptoms are indicators of an over-aroused sympathetic nervous system. They are indicators of post-traumatic stress disorder, or PTSD.

I expect your Honour to receive evidence that Kumanjaya had little or no internal bodily awareness, so he was not aware of either his internal body sensations or his internal feeling states. In trauma-related terms, this is called disassociation. As a

result of the high level that he experienced, he had significant impaired capacity for self-regulation and that is something that is common in many people who experience PTSD.

Kumanjayi functioned most successfully when provided with a stable, structured and supported environment, as evidenced by his initial stays at the Mount Theo Outstation and at SEVJEN(?) in Queensland and at CAAAPU, all of which we'll learn more about in this inquest. I expect that Ms Chilvers will give evidence that Kumanjayi needed an assessment under the NDIS, the National Disability Insurance Scheme, in relation to his needs, and that she had tried unsuccessfully to have him referred for that assessment, for a FASD assessment, so he could be assessed for disability support.

Kumanjayi was first charged with criminal offending when he was a teenager in early 2014, around the time he started to get in trouble at school. As a child, the majority of his offending was for property crime and it sometimes impacted on essential services in Yuendumu, such as the school or the health clinic or the sport and rec centre. I expect your Honour will receive evidence that, although Kumanjayi was obviously loved, that behaviour was a source of frustration and upset to many community members.

The remaining offending was most often the result of breaches of bail or court orders or absconding from youth detention or a residential rehabilitation program as a means of returning to his home community at Yuendumu. In order to assist us to understand the impact of this, police investigators put together a chart showing a visual representation of the offences committed and the number of days in custody since 2014.

I'll just check if we're ready to show that, and if not – page 14 of that.

Page 13, your Honour, and beg your pardon, I'm sorry to (inaudible).

If I could just – I'll use that one, that – rather than – just keep coming up there, keep coming up one. That'll be fine. That's fine.

So if you look at that, they may help the court to understand the level of contact and conflict that Kumanjayi had with the police. And the reason I'm showing that, is to help understand the fear that Kumanjayi may have had of going back into custody, when he had already spent so much time in custody, and was wanting to be with his family and community. So if you see that from the age of 14, in 2014, he was under some form of restraint, for at least half the year.

He was in custody for 115 days. When he was 15, it was 134 days. 16, 126 days. 17, 153 days. 18, 144 days. And by the time he was 19, it was more than half the year, 218 days that he had spent in custody. And in that last year, in 2019, you'll see there are zero days when he was not under some form of restraint.

That can down now.

I expect your Honour will have evidence, including from a number of police living in Yuendumu, that they had arrested Kumanjayi peacefully, and without incident, on a number of occasions. And that includes the ACPO, Aboriginal Community Police Officer, Derek Williams, who I expect, your Honour will hear from this week. And that Mr Williams will be able to tell your Honour that he would transport Kumanjayi in the front seat of the car to the police station, when necessary.

He was arrested without incident by Sergeant Julie Frost, and by Constable Felix Alefaio, and by Constable Lanyon Smith. Your Honour, Sammy Butcher, who was grandfather to Kumanjayi, provides a recorded statement, which I – or a statement which I anticipate your Honour will find very helpful. And in it he says, “In life’s journey, he was just a young kid. He needed help, and like I said, he took a wrong turn, and went stealing, and ended up in gaol.” A significant part of this inquest, perhaps towards the latter end of the inquest, will be focussed on what help did Kumanjayi get, and what more could he have got, to try and avoid further confrontation with police.

Sergeant Annie Jolly was the officer in charge of Yuendumu Police Station, for extended periods when Kumanjayi was a teenager, having contact with police. I expect your Honour will hear evidence that she reported her concerns for him, for his well-being, and for his safety, multiple times, to the Department of Children’s and Families, now known as Territory Families.

Your Honour, it’s now 4.15. It’s been a long day. Is that a convenient time to stop?

THE CORONER: Yes, thank you Dr Dwyer.

So we are recommencing at 9.30 tomorrow, and we’ll continue with the opening?

DR DWYER: Yes, thank you, your Honour.

THE CORONER: Thank you.

We’ll adjourn.

ADJOURNED