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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 1 MARCH 2023

(Continued from 01/03/2023)

Transcribed by:
EPIQ

MURRAY SMALPAGE:

THE CORONER: Mr Officer.

MR OFFICER: (inaudible)

THE CORONER: Sure, Mr Officer. Thanks for letting us know. We wouldn't want you to miss out.

Yes, Dr Freckelton.

DR FRECKELTON: Thank you, your Honour. I've just ask Deputy Commissioner Smalpage to sit out of the box while I make an application to you. It's in relation to one of Ms Bernard's and my client's, Cam Vivian (?) and the application is that he be excused from answering the summons and from giving evidence to the court.

I said with this reluctance because we, like many of the other parties, would have been keen to hear what he had to say in relation to text messages and in relation to any insights he had about Mr Rolfe's mental state at the time. However, your Honour has medical reports about him. He has been on sick leave – went on sick leave from late in 2019 and he ceased employment in 2020.

For sensitivity sake and medical and privacy and things like that, I don't want to say too much about his position, but he has a number of mental health conditions which were very apparent when we endeavoured to speak to him and some of them revolved around post-traumatic stress disorder and other sequelae from experiences that he's had.

And he also has some significant physical injuries which require him to take a number of difficult opiates. We tried to speak to him for some little while and he was, at times, incoherent, unresponsive, disoriented and he became extremely distressed.

In those circumstances, your Honour, we have grave reservations about whether he is in a position to assist the court, and every time we've mooted anything in relation to his giving an account of something which might be relevant to your Honour, we receive nothing back that was coherent and he was very, very upset and at times weeping.

So, in the circumstances, for humanity's sake and also pragmatically, in all terms of utility of what he could provide to your Honour, we'll make these submissions that you excuse him.

THE CORONER: Yes. Does anyone else wish to be heard in relation to that application?

DR DWYER: No, your Honour. I certainly don't wish to be heard against it.

THE CORONER: Sure.

DR DWYER: We're grateful to Dr Freckelton and his team for the efforts that have been made to try and engage this witness. We appreciate that they have been very sincere and determined. It's obvious from the reports provided that he's got a very genuine health issue, mental health issue. And he was - - -

THE CORONER: And the nature of those reports are psychiatrist's reports?

DR DWYER: A psychiatrist and a psychologist, I think.

DR FRECKELTON: A GP.

DR DWYER: Sorry, a GP.

THE CORONER: Thank you.

DR DWYER: They've been provided to us in confidence. We've read them and it's very clear that those conditions are genuine and they have been present for a significant period of time. I note also that he is a witness who was not involved in the events of 9 November 2019.

He would have had a small contribution to make with respect to an issue, but he is what might be termed as a peripheral witness, still a relevant witness, but in these circumstances, in my respectful submission, it's appropriate for him to be excused.

THE CORONER: Yes, there being no other submissions in relation to that issue, I will now excuse Mr Vivian from his summons.

DR DWYER: And I just note for the purpose of press that there's a nonpublication order over his name. It's an interim nonpublication order that your Honour will revisit towards the end of the inquest.

DR FRECKELTON: Your Honour you asked yesterday also that we obtain information about community safety meetings at Yuendumu. We are part the way through that process and it will take just a bit longer as soon as we've got the information we will provide it to you either through Mr Smalpage or (inaudible) I will provide it to you if that is satisfactory.

THE CORONER: Sure, thanks.

DR FRECKELTON: That's it.

THE CORONER: Thanks Dr Freckelton.

DR FRECKELTON: So it means we are ready to - - -

THE CORONER: Deputy Commissioner?

DR FRECKELTON: Yes.

MURRAY SMALPAGE:

THE CORONER: Thanks, and you're on the same promise?---Thank you, your Honour.

DR FRECKELTON: Mr Smalpage, I'd like to raise an issue with you about the operation of remote stations and the demands made of personnel. I do that in the context, of course, of Sergeant Frost and Mr Hand being short-staffed at the relevant time in 2019. Is fatigue an issue at remote stations?---Yes, it is.

Can you tell her Honour about the pressures upon personnel at remote and rural locations?---Your Honour, I know you're a long and lengthy history with the Northern Territory but it's across the breadth and depth of really remote locations police officers are often called upon to do a myriad of tasks. My lived experience is that they don't all happen between 8:00 and 4:00 and we have to be responsive and able to provide community safety and investigative responses and just general police responses on a 24/7 365 day cycle, so it's a very onerous task and the information that's relayed to our joint emergency communication centre about what requirements are and - is often a difficult process the not triage, so whether we attend or not attend. So it's a very complex operating environment and our primary focus, your Honour, is generally around trying to prevent community harm and any harm, so it's a really onerous task and, you know, ultimately police officers and police members are paid for 40 hours a week and there's a lot of hours outside of those rostered hours of duties and I am extremely proud of the work that has gone - goes on right across those remote locations to provide a response service 365 days of the year, 24 hours a day, seven days a week in all sorts of inclement weather and tough operating environment, your Honour.

At par 251 of your third affidavit you make reference to the (inaudible) of officers who are required to be on call. One way in which they are looked after is financially by paying them amounts in overtime, is it not?---That's correct, your Honour.

And there are occasions where one can see - and I know you've looked at this - from the overtime sheets that significant overtime hours are worked by members. Is that correct?---That's correct, your Honour, and no more highlighted but in this inquest where - at Yuendumu.

Presumably the preference of the Northern Territory Police service would be that members would not be required to work substantial number of hours of overtime and that there would be more members available to perform the necessary duties?---Correct.

And is that something which is being discussed with government?---It is, your Honour.

Now, otherwise, what is done to alleviate the pressures upon members who, for the moment, are required to be on call in community with persons coming to them at all manner of hours and their needing to attend to a range of response and duties outside hours. What do you do to ease the pressures and enable them to keep functioning in a reasonably healthy way?---Again, your Honour, it's a complex environment and it shifts right across the Northern Territory by locality. But again, the primary role of the Territory Duty Superintendent in their 24/7 senior leadership role is to monitor demand on our service and make critical decisions whether we actually need to deploy people outside their rostered hours of duty to attend to a specific task or incident. That in itself is an onerous task because it revolves around sometimes having to make critical decisions when you've got scarce or scant information.

I will just come back to the Territory Duty superintendent in just a moment with you, if I may?---Yes.

But what else is done in terms of giving people a break and what is being done in terms of increasing numbers at police stations at the moment?---So, your Honour, there has been an increase already, so there is - I think it was 20 FTE approved for increase so far into our remote and regional footprint. Those positions are yet to be filled but they are now permanently allocated. As I understand as recent as today there is potentially further FTE to be allocated to Alice Springs Police Station, which is the central hub that provides relief to our remote and regional locations. We have already put additional FTE - and it's the intent from - for the last two years wherever we had a two member police station, to make it a minimum three member, that would provide a limited opportunity for us to provide some relief at that community or that locality, so one member may remain off duty while two members respond, to provide some level of respite, hopefully to relieve during periods of recreational leave and others, so the larger centre is not required to provide a relief component. I think from 19 localities have already received additional FTE including Yuendumu.

You refer to Yuendumu in paragraph 255 of your affidavit - third affidavit with an increase. Is it from 5 to 7, is that current at the moment, as far as you know? ---That's correct.

Are members given allowances and given a variety of forms of assistance to travel, for instance, from a remote location to a hub to have a bit of a break?---That is correct, your Honour, under the consent agreement at remote localities they are called "FOILS" - fears out of isolated locations - and that's to provide, during the course of the year, respite, allowing members to travel to a larger centre to have some respite from the pressures of working in a community - remote community.

Now, you have referred to the Territory Duty Superintendent in each one of your affidavits. We will go through them in sequence. Your first affidavit at par 187, 187 of the first affidavit. What you say there is that on 9 November there was no Territory Duty Superintendent who was a full time person booked them in that role, is that right?---That's correct.

But it was brought back fully later that month, by the Commissioner, with the Territory Duty Superintendent starting their role at the start of 2020?---That's correct, your Honour.

Now, in the following paragraphs you speak about the role of this superintendent and the impression you give is that it is a very significant one so far as the force is concerned. Could you speak to that a little bit more, what the superintendent does, and in relation to responding to the need for fatigue - to relieve the management and otherwise?---The Territory Duty Superintendent represents the Commissioner of Police in a 24/7 rotational basis. So 24 hours a day, 365 days of the year they are the key critical decision-maker when there is an urgent requirement or a requirement for resources. They monitor police activity across the Northern Territory on a continual basis and they are seasoned and experienced police officers with a high level of technical knowledge and competency for the role to make critical decisions around operational activity and deployment.

At 189 and following in your first affidavit, you identified that they are supported by the Tactical Intelligence Support Unit, at least as of June 2020. Without going into detail can you just explain what the role of that unit is to the Northern Territory duties?---Your Honour, that's an initiative commenced that provides that 24 hour/365 day capability to provide tactical intelligence to the Territory Duty Superintendent to relay to anywhere any member anywhere across the Northern Territory if the need provides it. And that position has access to intelligence databases and other relevant information that can help shape a deployment, for example, or identify connections, relationships, and provide, without divulging all of our tactical intelligence capability, but provide some real time information to people on the ground.

Go to you second affidavit then at pars 5 and following. You explain that at the time of the tragedy at Yuendumu there was a person differently named but only with a part-time role, a Territory Duty officer. Is that right?---Correct. What paragraph?

Number 5 from your second affidavit?---Correct.

So, you then explain in par 11 and following that the Territory Duty Superintendent has a variety of roles. You've spoken in essence about dealing with coordination of resources. That's the third one and responding to emergencies. But you say at 4 and 5, and would like to ask you of that, that the superintendent is responsible for delivering all frontline policing services and notifying the executive of relevant matters?---That's correct.

So, if today the axe incident or matters at Yuendumu were starting to emerge what would the role of the territory duty superintendent be?---So, the Territory Duty Superintendent would assume that overall command and responsibility for managing that incident and they would make appropriate command decisions about resource allocation, specialist deployment, communication with Watch commanders. When it talks about delivering of all frontline policing services the Territory Duty Superintendent has the authority of the Commissioner of Police to cut across

command responsibility and just allocate resources as he sees fit as opposed to sticking to a strict, rigid command structure.

In respect of the axe incident I'll ask you to turn to par 277.

THE CORONER: Which?

DR FRECKELTON: Of the third one. Sorry.

THE CORONER: That's okay.

DR FRECKELTON: Third affidavit, your Honour.

And you say there that your expectation would be that the relevant sergeant, which would be Sergeant Frost in these circumstances, would communicate with the territory duty superintendent and discuss and respond and talk through fatigue support and also strategies for taking Kumanjayi into custody. Is that right?
---Correct. That's correct.

So, what difference do you envisage that making to what occurred where in this instance Sergeant Frost was not lacking in support. She spoke to Superintendent Nobbs. What's the advantage of territory duty support?---Well, again, as I've seen occur in other instances since the territory duty superintendent, for example, may ring the TRG. He may not wait for them to reach any consensus. He might make a phone call himself, well, "This has just happened. What do you think?" He may seek advice from other specialist areas. He may - - -

THE CORONER: Superintendent Nobbs could have done that though couldn't he?
---He could have made that phone call but I think in this environment it's probably a learning curve. We've already had since that date where we would probably not wait for that. We'd make the phone calls and the territory duty superintendent has that empowered command. He can cut across all commands to get resources or seek advice. Do whatever he thinks is necessary to help resolve an incident.

DR FRECKELTON: Going back to fatigue management you refer at par 253 and following to an example where the Duty Superintendent made arrangements in a particular scenario in fact involving Yuendumu for relief to be provided. And so what is the advantage of having the duty superintendent doing that rather than the part-time predecessor?---I think it's touched upon clearly, and you've heard the evidence, your Honour, where, you know, divisional superintendents have a whole a raft of responsibilities other than just the operational phase. Your Honour, human resource management and a whole raft of responsibilities that the territory duty superintendent doesn't have. He's just purely focused on our operational response. He can call out other specialists. So, it does involve a degree of respite and support for those divisional superintendents to focus on some of that more strategic planning as part of their necessity of their duties.

Do they have a Territory-wide overview of requirements and feasibility of response?

---Your Honour, they operate at the desk and they have a visibility of all our current operational activity for deployment. So, they're monitoring jobs, ICAD tasks as they've come in, 000. They monitor a whole raft of responsive operational activity and, you know, well versed in what's going on right across the Northern Territory at any given moment in time.

And are they expected to communicate with the executive about anything that senior members ought to know about?---They comply with the current and existing general orders if there's a requirement for an assistant commissioner or deputy commissioner to be notified. It's not uncommon that I receive phone calls from the territory duty superintendent seeking official declaration of events or on occasion advice, "What should I do? What do you think?" And they do provide regular notifications through an email system of critical incidents involving use of force, injury to police members, incidents that are likely to attract significant media attention. A rate of emails turn up on my phone and other members of the executive's phone of things that we think are critical and we should know about.

Thank you, your Honour. That concludes what I've got to ask about that topic, (inaudible).

THE CORONER: Yes. We'll just break briefly.

WITNESS WITHDREW

ADJOURNED

RESUMED

THE CORONER: Yes, Dr Freckelton.

DR FRECKELTON: Thank you, your Honour.

MURRAY SMALPAGE:

XN BY DR FRECKELTON:

DR FRECKELTON: Deputy Commissioner, I'm going to ask you about another issue in terms of support for members of the principal distress arising out of Kumanjaya death of course has been fraught for his family and his community. But is it fair to say that his death, the enquiries into it or revelations of the racist text messages have had a significant impact on the police force generally?---Yes, your Honour. I don't think there's any doubt in any corner of the Northern Territory Police Force that are now awake, alive, shocked about some of the issues that we've discussed in this courtroom and the evidence we've heard.

You make reference to the role of the chaplain and social worker in providing support for members in relation to a wide variety of issues. But I think that's included to – included the ALOs in respect of how they've experienced the revelations of racism, is it not?---That's correct, your Honour. And we've heard powerful evidence in this courtroom.

You say at par 238 of your third affidavit that some difficulties have been experienced in securing an appropriate chaplain and social worker from the southern region. That has been attended to now. And support is provided also from external psychological and counselling services to members and has been quite intensively. Is that right?---That's correct, your Honour. And both those positions are now filled and were present partly during the inquest at the back of the courtroom to provide support to witnesses.

Keep your voice up, if you would, please?---Sorry, your Honour. To provide support to witnesses in this inquest.

Can I take you to par 247. Can you explain to your Honour a little more about what you mean by that?---Yes, your Honour, I think we've heard some evidence throughout this inquest regarding, you know, critical incident. "Critical incident" is a terminology that triggers wellbeing support and as a result of what we've learnt, I think we're using that as an opportunity and the Commissioner of Police has announced it. And I think there's clear evidence of a new wellbeing strategy that we're driving right across the tri-service, not just the Northern Territory Police Force, but the tri-service to improve wellbeing services to our first responders who, by necessity, are confronted with trauma daily. The new policies will, you know, include the roles and reintroduction of the roles of peer support officers seeking additional FTE and funding for new critical roles to assist in helping the wellbeing of our workforce.

Would you mind turning to par 329 of your first affidavit, please?

THE CORONER: What would be provided now, for example, if there were police coming back from a critical incident into Alice Springs? Because we heard that part of the reasoning for what has been referred to as the “barbecue”, even though it wasn’t, was perhaps a gap there is the services to support those returning members. What would happen today?---So, your Honour, we’ve very - only touched upon it briefly, the role of the Territory Duty Superintendent, but one of the issues we did talk about was those notifications. The critical incident notification of something that’s going to attract significant either attention – they include, you know, incidents for example, fatal road crash, death all get reported through the process, through the Territory Duty – that provides an opportunity then for us to ensure that we reach out to the affected members and that’s done in a variety of ways. Depending on the incident, they include up to the Commissioner of Police, myself, the other deputy, Michael Murphy, our assistant commissioners, our commanders, we ring people up and ask how they’re going. So, there’s one layer.

THE CORONER: So, let’s not just talk about depending on the incident, let’s just focus on this incident. We all want an incident of like to be prevented in the future. But if this incident occurred today, what would happen in relation to the returning members?---In this – if it happened tomorrow and we have, your Honour, had another incident similar occur, we provided that automatic support through our Health and Wellbeing service, through our psychologist if they wish to partake of psychological support. I do know through our colleagues at the Northern Territory Police Association, they also provide support. So, there’s an incident reach out to an affected member to provide psychological wellbeing support. The timings of that, our often we go back to do it, those are matters that I think we can improve upon through the wellbeing strategy that we’re driving forward. But there will be an automatic reach out by appropriately trained people to provide support. It is a voluntary process, your Honour.

Sure?---Many members may feel that they are capable of managing that incident themselves until the time they don’t, and that’s when the chaplains, peer support officers and others provide that support role that can take place weeks, months, years later.

DR FRECKELTON: You just mentioned “peer support officers”. You refer to them at par 241 of your third affidavit. Can you tell her Honour about the changes that have been made to the peer support program?---It’s been identified that the peer support program wasn’t as effective as it could be. I think that – I identified that they had received no ongoing support. We want to change that, creation of a new position to provide that greater direction, planning, support material to enable those peer support officers to be effective in the workplace.

You make reference to par 239 of this third affidavit, just two paragraph up, to two pathways for obtaining psychological and counselling services. It’s also known as the “Employee Assistance Program”. Can you say a little bit more about that?

---Again, that's an existing system where any member of the tri-service can reach out through EAS, the Employee Assistance Program to see psychological support. It includes themselves and their immediate family members, often those issues are around family support. Police officers are not immune to the challenges of daily life and it provides some ability should they desire it - or family members - to seek psychological support.

You make reference in par 242 down the bottom of that page to a review of the support wellbeing services by an external consultant which was completed during 2022, something in a variety of recommendations which have been accepted by the Commissioner and the establishment of a wellbeing project team, to which you make further reference at par 245. Again, can you enlarge on that for her Honour?

---That's articulated quite well at par 245, your Honour, but it's clearly a foundation stone for the Northern Territory Police Force moving forward about how we can better address concerns about wellbeing of our workforce. There's a number of statistics provided within my affidavit but all practical things including obviously intent to roll out gym equipment - things to help the workforce themselves be better prepared for the rigours of the job that we ask them to deliver. The wellbeing strategy has been adopted by the executive. We will be personally driving those initiatives, but again, it is still in a project framework at the moment your Honour and we are delivering a number of those initiative as we speak, but some early successes have been under the machinery of government there was outsourcing of specific roles within the Northern Territory Police Fire and Emergency Services. Those FTE have now come back to the Northern Territory Police Fire and Emergency Services so we can actually utilise and harness them better to provide support for these critical roles as that we would need to do, your Honour.

You make reference to resourcing issues in paragraph 246 about what is (inaudible)?---That's correct, your Honour, and we're seeking funding.

I am about to move away from that to the wholesale review of policies, procedures, general orders and similar. You make reference to this at par 131 of your third affidavit report. Now, the Northern Territory Police Force has had a very significant number of general orders and also a large number of ancillary documents which has been difficult for police to be clear about what they should do in some scenarios. Is that fair to say?---That's correct, your Honour.

So what is being done about that?---We've had a rigorous team operating for a number of months - years - to re-write - total re-write of all our general orders to make them contemporary, identify gaps, bring them into line with the Project 2030 back to basics strategy, to identify the changes in language, structure, some of the general orders and copies that are contained within annexures and exhibits at this inquest and dated, they contain positions that no longer exist. It's a significant scope of works but I'm very pleased to say there's been a - and I can't provide that number here but there's a large number of those already have been changed, a numberer with the process through the management of the changed process with the Northern Territory Police Association and other interested parties to ensure that we have engagement and it's a major priority and ongoing this year.

You say "ongoing" but in par 121 you indicate that that seeks to come to a conclusion at the moment, (inaudible) impact?---That is our objective, your Honour. I do speak regularly to that team. They have done a mountain of work.

How does the Northern Territory Police Force handbook fit into this reform process? You refer to that a par 134 and 5?---Yes, it's a new concept. We used to have a - as I am informed, your Honour, on a PPPE online system. It was often you'd click on it to try and determine what process you should take and it may have contradiction, it will take you to an outdated general order, a policy that doesn't align to a general order and it didn't align well with contemporary modern policing. The Northern Territory Police Handbook which is what we - the new handbook which is under way and we're hoping to have delivered very shortly, is really a great initiative and will allow front line members and others - supervisors - to access it in one location as a comprehensive guide to how we should be going about our business.

Just pick out one of those general orders that has been - has been revised. There is the general order Operational Safety and Use of Force. You refer to this in your first affidavit but more importantly you refer to it in your third at par 118?---Correct.

That is anticipated to be - to reach a conclusion and endorsement in the middle of this month, does it not?---That is correct, your Honour.

Now, where do important issues like strategies, the DS promotion and so on, fit into this?---That draft general order has been the subject of much ongoing debate, consultation, rigorous comment and it is included within that new general order.

And are you prepared to make that available to her Honour before we resume in August?---I am, your Honour.

You refer at par 329 - and the draft is already on the brief. So go to par 329 of the first affidavit. You make reference there to changes to the return to work and personal leave management (inaudible) and then at paragraph 44 of your second affidavit you identify it at that stage, there has been a delay with it and then at par 248 of your third affidavit you explained that the exercise was in final phases as part of a consultation process and it was anticipated unless there were any major changes required by such things consultation with the association it would be promulgated by the end of this month. Are you able to give her Honour any update on that?---No, your Honour, that is my advice, by the end of the month.

What is the essence of the proposed changes to your change of (inaudible)?
---Again, I can't give that specific detail without referring to the written document.

That's perhaps something for Mr Porter. Mr Porter, I think has responsibility for all matters to do with personnel, is that right?---Correct, your Honour, people.

Just in general terms then in relation to health and wellbeing, what is the responsibility of a member if they have a health condition which might impact upon

their ability to discharge their duties?---It's my belief that they would - should - relay that information through their chain of command to ensure we have appropriate places for them to work and safe conditions for them to operate in.

What is their obligation if they are taking medication for a psychiatric or physical condition which might impact upon their ability to discharge their responsibilities? ---Again, it's my understanding, without reference to that specific document, if you could direct me to it, that they would inform through their chain of command so we're aware of it, and assign appropriate duties so we don't either further expose them to harm or take steps to protect their wellbeing.

THE CORONER: People are reluctant to report when they are having difficulties, Dr Freckelton.

DR FRECKELTON: Yes, they are.

What is the responsibility of supervisors recognising that reality, Deputy Commissioner?---Again, your Honour, a supervisor would identify changes in the workplace and take appropriate steps to help that employee. We are a fairly tightknit group of people. Hopefully we would identify that and we can provide that level of support either through the agency officially through our process, through our informal relationships as friends and colleagues of people, and through, if necessary, access to consent agreement entitlements, personal leave and other things. The police members in the Northern Territory have a very generous personal leave allocation and, from my experience, are not reluctant to use that if it assists them with their mental wellbeing.

Has that addressed what your Honour had in mind?

THE CORONER: Well, I've got another question.

What's the responsibility of colleagues if they are aware of circumstances that ought to give rise to a concern?---Your Honour, I don't think there's any general order or policy that's ever going to capture the realities and the frailties of the people that we work for, human nature I think. Every one of the police members that I deal with within my lived career we generally have a really strong sense of comradery, loyalty to each other. My experience has been if we know a member is in distress we would reach out without any necessity of the agency as a force to do it per se. the membership themselves would reach out to support your colleague and I think that happens all the time from my knowledge and experience.

DR FRECKLETON: This isn't in issue but has consideration been given to (inaudible) assertive involvement by mandatory testing or imposing an obligation on colleagues to alert management they think that their colleague has a problem which is interfering with their capacity to discharge their duties?---Your Honour, again I'm not aware of an official general order that says we must if you're aware of your colleague, Dr Freckelton, unless you can refer me to a specific policy. My lived experience, as I've said, your Honour, with policing it is a very tightknit group of

people. However, your Honour, I'll make the point that if someone doesn't want to disclose private, personal things tragically you don't know. And the reality of it is there's been a number of instances I've been involved with personally where a member suicide and we soul searched the same as if it was a family member. And why did we miss the trigger signs? Why didn't we know? What could we have done? All those things are human and regardless of rank and position I think every police officer when it happens is confronted by it and wish we could have found a way that it didn't happen and identified it earlier.

I propose to move to another topic. Most of the questions on this are going to be directed in due course to Mr Porter but as his superior it seems to us that it's appropriate to raise the issue, Deputy Commissioner Smalpage. It has been identified that there have been deficiencies in exercise of supervision in relation to the conduct of members during this inquest. Is that right?---That's correct.

And it's also been identified that there have been deficiencies in some aspects of the performance of the Professional Standards Command over recent years?---Yes.

An external review was commissioned led by a Victorian Commander Mr Gillard into those matters. Is that right?---That's correct, your Honour.

And her Honour now has a copy of the report loosely be referred to as the Gillard report which makes a large number of recommendations and has urged the force to make fundamental changes to shift toward an excellence framework and to make adjustments to how it handles complaints. Is that right?---That's correct, your Honour.

What has the commissioner's response been to that report?---The Commissioner of Police has, in principle, adopted those recommendations. I'll clarify, your Honour, in principle means exactly that. Obviously they are wide-scoping. They are detailed and will take significant effort by the Northern Territory Police Force and our key stakeholders to try and work our way through what we can deliver upon short, medium and long term. So, that's an ongoing scope of works that as we speak we're developing a project team which will help us drive those initiatives that we can deliver from that project which is, whilst we've commenced I think to be brutally frank it's in our infancy, your Honour. And the recommendations are bold and will take significant management of change and consultation if we're to be successful in changing the process.

That includes bringing in an assistant commissioner with sole responsibility for the Professional Standards Command, is that right?---That's one of the recommendations, your Honour, yes.

Do you support that?---I do, absolutely.

It also includes additional functions for the Professional Standards Command. Itself to generate matters proactively, to pursue matters which come to its attention. Do you support that?---Absolutely, your Honour.

It recommends a shift toward a focus on achieving excellence rather than purely discipline. Do you support that?---I do, your Honour.

Can you say a little bit more about how that would involve a reorientation of how matters are dealt with including complaints but going beyond complaints?---Again, your Honour, without referencing that document to any minute detail in a general principle I support the proposition that we should be managing performance, take remedial steps to guide our workforce. To be less punitive if it doesn't require punitive outcome. The provisions of the *Police Administration Act* as it currently exists are very restrictive and I think it provides great opportunity as identified that's across a number of other policing jurisdictions too, focus really on the conduct and performance. And then depending on the conduct and performance what the outcomes should be rather than a purely disciplinary focus.

Does that, however, involve maintaining a robust position in relation to conduct which is a significant breach of discipline?---Clearly, your Honour. I think there's certain conduct that's just never going to be acceptable and it doesn't affect that. I think there's a raft of other issues that may become disciplinary matters that we can properly and appropriately deal with as managerial issues.

Is a part of this a move toward expediting the resolution of matters that are the subject of complaints, for instance, from NAAJA?---Yes, your Honour.

Do you accept that there have been delays which are unsatisfactory in the resolution of complaints under the current process which involves the police and the officer? ---Yeah, the time delays are a issue that affects both parties but in particular from a policing perspective members of the Northern Territory Police Force.

And that's problematic from the perspective of police command but also problematic for the member involved and also from a perspective of the complainant? ---Absolutely, your Honour. I think rapid justice, my experience and my learnings from elsewhere and from the Northern Territory would be the sooner we can resolve matters the better outcomes we get for both complainants, victims and police members who are affected. And it can align more closely with perhaps some managerial issues that we can address conduct performance. Often there's perhaps underlying reasons why conduct relates into things have been missed. Lots of issues we can take that will perhaps address that performance and really a focus on early intervention that we can identify the individual the sources of conduct which may be missed in isolation and identify patterns and trends so we can reach out to employees that we think are at risk of further misconduct or other matters and provide them the appropriate support and direction and guidance so they don't progress.

So, in relation to those less serious matters, has (inaudible) recommended an devolution of matters to command at lower levels of supervisors, rather than there being four other matters (inaudible) of preliminary process?---Yes, your Honour, and I support that as an initiative, I think; conduct and discipline is best owned at the local

level where the members are observing their behaviour as opposed to a third party who comes in and often the local members don't even know that there's an investigation afoot. So, I think it pushes responsibility for behaviour and conduct back down to the frontline where supervisors who are best placed to observe that conduct in the field can address it.

But these are the less serious matters. Is that right?---Less serious matters, yep.

Now, have meetings already taken place, to your knowledge, with the Ombudsman's office, with the Police Association and other relevant personnel to move forward toward implementation of this report?---That very first phase has commenced, your Honour, where engagement's commenced.

And you've referred to a project team, I think including an external facilitator. Is that right?---And a number of senior public sector positions that will assist us with providing an effective project management framework, deliverables, accountability, timelines, so we can effectively manage change and the change process and the consolidative process.

And will you be involved in that yourself?---I will, your Honour.

In what role?---I'll be leading it.

Okay?---I will add, your Honour, with support from my colleagues, including Assistant Commissioner Porter.

Issues in relation to the withdrawal of health staff have already been discussed before her Honour and referred to by you, I would like to take you to par 388 of your first affidavit. As you are aware, the health staff, and nothing I'm saying is intended as criticism of them, elected to remove themselves on a temporary basis from Yuendumu on 9 November 2019. You're aware of that?---Yes, your Honour.

Issues so far as they were concerns were arising into – in relation to their safety in the Yuendumu community because of break ins, including when they were actually present in their own residences. Are you aware of that?---Yes, your Honour.

Now, attempts have been made across different entities to address the process if it is contemplated that the health staff are no longer safe in a town, and how decision-making will take place. You refer to that at 307 and following?---I do, your Honour.

Could you summarise the situation for her Honour, please?---Obviously, there's a number of bodies that I think evidence may have already been led here in this inquest, your Honour, but they include Central Australian Regional Coordination Committee, Regional Co Ord. And that's every three weeks and then there's a southern and a northern regional co ord, has agency heads, including the National Indigenous Australia Agency, NIAA Regional Local Council. Central Land Council. The Assistant Commissioner Martin Dole attends those meetings. There is a remote worker safety subcommittee of Regional Co Ord, which was stood up which includes

membership, chief minister and cabinet, Northern Territory Police Force, Territory Families, housing in communities, Department of Education, Regional Council, NIAA, and they hold meetings around issues that we can – are better identified to help address those concerns that we've heard articulated within this inquest.

Deputy Commissioner, you're in your third day in the witness box already. You've given evidence on a great many matters in response to my questions and there will be questions from many others. In general terms, what is the – your own commitment and that of the police force to, not just listening actively, but to making changes in accordance with, for instance, the matters in attachment 12 to your affidavit?---Thank you, Mr Freckelton. And your Honour, again, I say this on behalf of the executive of the Northern Territory Police Force, since my appointment here, and I know from everyone else that's currently attached to the executive, we are committed to change. We are committed to reform. Reform and change are not easy. They're complex. At times, they can be confusing for the workforce, but nevertheless, we are committed to making significant reform to the Northern Territory Police Force to ensure that we minimise the opportunity of this every occurring again. The steps that we've taken already – already undertaken, in my mind, having lived through three or four previous reform processes in other places, it's probably one of the most significant that I've been involve with and the things that are implemented are not just word fests and talk fests, they have been delivered with action, speed of which it occurs is frustrating, I can sense from everybody, including the executive, but if we're to make deep and meaningful change, it's got to be done properly and it should be done, considered, thoughtful and appropriate. And the biggest single improvement I see already in my journey so far is the introduction of CREC and the driving and the reformation of cultural awareness and sensitivities through our agency. That's not just tokenistic, your Honour, there are improvements that I attempt to identify throughout my affidavit, but they are real. I see them happening. I see the difference and I think they are absolutely the cornerstone for helping us move forward to be a better police force, a more responsive police force, more culturally aware police force. And from what I see, your Honour, I think we're actually leading some of the police forces from across Australia in that process at the moment. And whilst that may be cold comfort, that's the fact. As recently as last week, your Honour, we had number - I think I've identified a number of senior police officers from across Australia here; New South Wales, Queensland, South Australia and Western Australia meeting with our assistant commissioners from the Northern Territory to discuss a whole raft of issues similar to here. If anyone of those other police forces had solved and had a solution, we would be implementing it instantly. It's a wicked problem, your Honour, and we are committed to working through that as an ongoing process and I don't think it will ever stop. It's something that will never totally - you can't – there's no silver bullet solution, your Honour, that I can see in short term that will resolve all these issues. But I just want to reinforce, on behalf of the Northern Territory Police Force, we are committed to that process. As difficult as it is, we're here; we're here for the journey. As an institution, the Northern Territory Police Force has been around for 150 years. It will continue to endure as an agency and we committed to make sure that we are better.

Thank you, your Honour, that completes my questions.

THE CORONER: Thank you. Mr Boe.

MR BOE: Thank you, your Honour.

XXN BY MR BOE,

MR BOE: Deputy Commissioner, for the record, my name is Boe and I appear with Ms Boe for the Walker, Lane and Robertson families. Firstly, I am instructed to acknowledge on behalf of the families your apologies which they listened to and were well received. What I want to focus on is something you said in your evidence yesterday, where you spoke about your intent was to listen and learn lessons with every possible nuance. You can appreciate that the nuance that I propose to take some of the questions, but it's not about questioning your intent, although it was a condition the force, but intent practical outcomes. You might like to point some matters out to see if you can assist us in assisting the coroner in relation to understanding what the factual matters are that you accept, so we can use that as a premise for submissions. May I just go through one aspect that I didn't discuss with Dr Freckelton, just so that this can be clear. Insofar as the materials have been put through in your name, they are intended, as I understand it, to reflect to position of the Northern Territory Police Force. Is that correct?---That's correct, your Honour, yes.

They're not just your personal opinions, I take it?---No, your Honour. They were compiled with assistant from the Northern Territory Police Force.

You stated yesterday that there's a senior executive, which is focussed upon these sorts of matters, you said there were seven senior officers, is that correct?

---Correct, your Honour. There's the Commissioner of Police, Deputy Commissioner Michael Murphy, myself and four assistant commissioners.

May I ask, how many of them are women?---None of the senior executive are women.

How many of them are Indigenous?---I've never asked any of them, your Honour, if they identify - to my knowledge, no.

How many of them identify as being Indigenous?---To my knowledge, your Honour, none.

Sorry, I just missed the answer?---None, your Honour - to my knowledge, your Honour.

THE CORONER: I am happy for you to look at Mr Boe while you are answering questions down the back, to assist communication?---Thank you, your Honour.

MR BOE: Do you know if any of them speak with any fluency any Indigenous languages?---I believe that at least two of those officers have some fluency, to my knowledge.

Assistant Commissioner Wurst, is that one of them?---Correct.

And who is the other?---Assistant Commissioner Dole has given evidence that he grew up at Yuendumu.

Now, if I may say, you have an impressive CV in relation to policing. Might I just talk down on some aspects of that. In short, does that come from your experience as a police officer in terms of the areas concerning understanding the Indigenous perspective? That comes from your training as opposed to any education?
---Again - - -

Education in a formal sense?---What, a degree in - - -

Tertiary education?---What, a degree in - well, again, I think all my tertiary education post has a sense of acceptance of cultures right across the board.

You would have seen that there are some reports from people who are qualified as professors and experts in Indigenous issues and how the Indigenous experience has coped with their collateral experience?---Yes.

Has any of your education been informed by that sort of level of subject matter and expertise?---Yes, I think with some of those cultural experiences I've had, yes.

Is that in a degree or some - - -?---No, no, by lived experience.

Lived experience. Now, how does the senior executive therefore, given that none of them are women - none of them identify as being Indigenous - inform themselves of the things they need to know in guiding the direction on the force concerning those sorts of issues of gender, Indigenous?---I think we don't live in isolation of the rest of the Northern Territory Police Force, Mr Boe, we have great relationships with our workforce including senior female leaders who aren't in the senior executive and Aboriginal employees and people we engage with on a daily basis across the spectrum of government and non-government agencies including NAAJA.

Please don't read into my tone or question that I have a view on it, I just want to know what the facts are. Is the totality of the information you see come within - come from within the force?---Well, I don't agree with that. We receive information from numerous sources all the time. The community - we respond to incidents, we talk to community members, from constables all the way up the pathway.

Let me use this example. When a football club has an issue about racism it's not unknown to bring in an expert in the field of unconscious bias, how race is an issue, the perspective of the people who have suffered that racism and perceived it. They brought them in to educate those who are in charge of the football club to address

things that they may not have picked up which have resulted in the incident that has brought about the enquiry. Do you understand?---Yes.

Collingwood Football Club, as I understand, is an example and they had to suffer the difficulties of having independent persons coming in and telling them what they may have missed, for example. Has the senior executive ever received the assistance of an independent expert in these sorts of areas?---Your Honour, again, I think I can't speak for the specific detail of the community resilience and engagement command but I am aware that even at local level we do engage with people who are traditional owners, subject matter experts to provide training and awareness to our membership.

Is there some catalogue that I can study of that sort of assistance that you've received?---I will take that on notice, your Honour. If I can provide that I will - I will provide it to you. Yes, I think there are, I think there's got to be some records that we maintain of people we consult with, yes, I am sure we can provide you something.

The purpose of my enquiries is one view might be taken from the summary of the NTPF actions that Dr Freckelton has tendered through you, contained a considerable amount of reforms which have been brought about since 2020, correct? ---Yes.

That would suggest that at least up until then there was a significant deficit in the capacity of the NT Police Force to have understood these issues which have brought about these significant wholesale changes, so my question is not a criticism, it is simply to identify that it's taken till 2020 to have understood - if I may say - how broken the capacity of the NT Police Force to engage with Indigenous needs within the Territory?---Your Honour, I don't accept that in its proposition. We've heard evidence here, your Honour, from some really outstanding and committed remote police officers who have lived their lives in remote communities, very sensitive and aware to cultural issues and I don't think it reflects that prior to 2020 that there was no acceptance or understanding or knowledge. I think the things we've done actually improve upon where we were. I don't think they are a criticism necessary of how effective we were because I've heard evidence that was powerful about a great deal of work - the good work - that was done.

As I said, my questions are not directed towards intent and well-meaning and decency about some officers, I'm talking about the overall structure in the workings of ordinary policing in the communities, but I will get to that point in a minute. May I go to an event that some of your members have spoken about and you yourself have spoken about, the Coniston massacre. May I summarise what - if I may submit is the critical issue taken from that that will inform, going forward, given what's happened to Kumanjayi Walker. You would be aware that, in short, it involved the killings of at least 31 Aboriginal people and on some accounts up to 200 Aboriginal people in response to a white person having been suspected of being murdered by an Indigenous Warlpiri man. You understand that that's the general context? ---Yes.

And as a result of that there were significant contamination obviously, which resulted in no findings of criminal liability for anyone, correct?---That's my understanding, yes.

But it was an event which you would accept has left the members of the Warlpiri and other language groups in this area deeply distressed and traumatised in terms of interactions with the Northern Territory Police?---In some instances, yes, your Honour, I would agree, but - - -

You wouldn't doubt that that event caused trauma to many many members of the families and in an inter-generational way?---Yes, I accept that.

And you would also accept that one of the things that came out of it is that there is a deep mistrust of police in those circumstances?---Yes, I can accept that there would be elements of mistrust across the board.

Surely you've heard - and I think some of the members have said, that issue has been raised with them?---Yes.

As to explaining why they do not trust police?---Yes. Yes.

And you would accept that the events of 9 November 2019 would likely trigger those traumas and perceptions of mistrust?---Yes.

In your understanding of the effect of the Coniston massacre, you decided that that's an important issue to be put in your brochures to police, of a significant event for them to be aware of?---Yes.

I'm mindful that the current amended version of the induction document to Yuendumu does refer to it. May I ask why when you have essayed in the induction training module called policing between cultures when it essays and lists significant events and turning Indigenous people from settlement right through it makes no mention of the Coniston massacre.

THE CORONER: Where are you taking him to in particular?

MR BOE: It's Pt 12 of the Coronial Brief. It's a document called "policing between cultures" which is, as I understand it, the training module used - 124, your Honour.

You'll see an appendix to it which lists significant events and it covers maybe 30 or 40 entries but makes absolutely no reference to the Coniston massacre?
---Without sighting that document, your Honour, I don't know when it was drafted. I don't know who the author is so I don't know. I can't explain that, Mr Boe. I don't know.

It should be in there shouldn't it?---I think if, again, I don't know the context of the document without viewing it to see what the context it's trying to leave. If it's appropriate I have no issue with it being in there.

I'm not concerned about the issue. I'm looking at manifesting the intent. That's what I'm focused upon. The nuance I'm focusing on is not your intent or the intent of the police force but what you have done and are doing and I'm hoping to assist you in indicating that those matters are important for my clients. That it's not just lip serviced acknowledgement but real practical understanding that having embraced it as an issue you acknowledge that they're matters to take into account. Do you understand?---And it's reflected in the new induction manual, Mr Boe.

It's not in there is my point?---Well, the current one it is.

You mean for Yuendumu?---For Yuendumu.

Let me just get to that. The Yuendumu document does not – is there an induction document for a person going to Yuendumu as a police officer intended to provide to them information to assist them in their policing duties?---At a high level.

At a what level?---High level.

What does that mean?---Your Honour, and Mr Boe, I think it's very a complex social issue that to write a prescriptive manual would be extremely difficult is to give those members the awareness when they arrive to help them form the relationship with the community so we can continue the journey on that cultural awareness. It's the start of the process not the end of the process.

Aside from that document what does a constable receive in a written form or a directional form like a general order or SOP, for example, of the importance of utilising an ACPO in an arrest situation in Yuendumu?---Your Honour, I don't know that there's a formalised general order that dictates how and when a Northern Territory police officer will utilise the provision of his members that he has available to them. That's an issue that every individual remote sergeant, officer in charge, would be looking for ways to utilise his or her service to best suit their community.

In your evidence yesterday, transcript 4076 and earlier you, in looking at assessing the quality of the arrest attempt on 6 November you made clear, and you used this language as to Dr Freckelton asking you as to the simply unavailability of Alefaio to assist or (inaudible) and your answer was, "Would have provided some greater assistance in terms of identification to avoid confusion or who they actually had in the house, etcetera." Dr Freckelton correctly pressed you a little bit more about that and used words like prudence, etcetera. And your answer was, "All would have been beneficial, yes." And finally, "I think it would have been highly beneficial." So, if I may say what we have is you in the position of the senior officer saying how beneficial it would have been in that arrest to have had the involvement of (a) an ACPO or, (b) a community police officer who knew this young man and would have great capacity to ensure a peaceful arrest. Hand and Smith received an arrest alert when Officer in Charge Frost was off duty. Took it upon themselves to go and arrest Kumanjaji there and then in circumstances where not much was known by them about there being a funeral in that community that day or that week. That Derek Williams was in fact attending that funeral. That Derek Williams was Kumanjaji

Walker's uncle. That Derek Williams had arrested Kumanjayi peacefully on prior occasions. You said that these experienced committed people in the community utilise their skills to work out how to approach it. They did not. Should they not have been required by a general order or at an SOP or an induction document to recognise the utter integral importance of having that sort of assistance to arrest somebody in their community?---Thank you. Your Honour, complicated question but I would offer the following. There is no general order that dictates how we would utilise ACPOs and ALOs and other members of the Northern Territory Police Force. The reality exists administratively and operationally. It may not be available at any given moment in time to have the services of any one of those additional support mechanisms to the officer in charge. A routine police arrest may not require an ACPO. There might not be one available. They may be on leave. They may be sick. There may be 100 variants that prohibit or restrict the ability to use it. Police officers use their judgment on a daily basis to make decisions of whether they going to effect arrests or not.

They may be explanations why an ACPO was not utilised. I understand that. Factually in this case we know that he was available, could have assisted. Wasn't even aware that Kumanjayi was under an arrest alert that they were activating. So, how do we get past this situation where we had this important resource which you acknowledge in your evidence would have been beneficial and may have alleviated the results that occurred on that visit and thereafter. How do we have some comfort that all the resources that you were putting in to increasing ACPOs and numbers of ACPOs, ALOs? At the end of the day we're left to individual capacity, intelligence, discretion, choice as to timing. Whether or not I go and find out – for example, in this case ACPO Williams was on duty with Hand the day before. Easily accessible. There's only 700 people in the community. Surely before they went on that arrest alert there could have been some conversation, whether it be with Frost, with Alefaio who's coming back from Nyirripi or ACPO Williams and say, "Listen, we've got this arrest for this young fellow. He's run away from a rehabilitation program. Let's find out about him. Let's find out about his cognitive difficulties. Let's find out about his circumstances." Why wouldn't that be a mandatory thing? It was not so much the utilisation at the arrest. But let's just use that resource when it's necessary?---I think they do use them very effectively right across - - -

They didn't on this occasion?---I don't know that I totally agree with that, Mr Boe. I think from the evidence I've heard before the inquest was that Derek Williams was at the funeral and so he wasn't immediately available.

No, this is before. This is 6 November?---Okay. Again, the truth of the matter is every individual police officer there has discretion about what they're going to do. I don't think we can write a prescriptive order or instruction that provides a simple solution that's going to resolve all the complexities that police officers face across the Northern Territory.

Now, an attempt at drafting a simple one that might work that when constables are responding to an arrest alert involving the apprehension of an Indigenous member in a community they should first determine the availability of an ACPO or ALA to assist

them in that exercise. Whether that determination – that enquiry results in, can't do it because there's nobody around, that's fine. I'm not here taking resource issues. But to put a positive obligation on non-Indigenous people, police officers carrying guns in a community to understand and show respect to the needs of the target as much as their safety concerns?---Well, I don't believe there's a necessity for it, a specific general order that covers that, your Honour.

All right?---I think those matters are adequately dealt with by seasoned professional police officers and their staff who can address those in the field.

Okay, thank you. Just dealing with another issue, one raised by her Honour just at the end of your evidence, is the sum total of the protections in place on mental health issues for members, and accepting that mental health has two sides; one is the danger to the member and we know about that. You've spoken about that. One is, of course, the danger to the community that somebody having particular medication or particular mental health issues, particular anger management is out there in the community. They're the two sides to it. At the end of the day, the protocols you have in place are totally self-reporting, correct?---I believe so, your Honour, yes.

Both on the part of the person who may or may not be reluctant to self-report, correct?---Yes.

Who may or may not have the mental insight of the need to self-report?---That – I'm not quite clear about that one.

The point you were saying, look I'm okay. I can cope through this. I know what I'm doing?---I accept that - - -

I don't want others to think of me lesser because I - - -?---I accept that to a point, but again, they do work in a team environment, there are other people present.

As to the team environment, what I took from your answer was that you can rely – or her Honour can rely on the collegiality and the spirit and the culture of the police that they would be protective of each other if they were aware of information. Is that correct?---Not information if there were mental health issues that may affect their mental health.

Yes, that's what I meant?---Correct. But again, your Honour, there is currently underway our drug testing and awareness program that we're trying to establish through legislative change where, through a random basis, we'll be in the workforce and we'll be able to drug test members. And that will identify if there are issues around perhaps substances that we weren't aware of. That will be an additional layer of awareness of people. And I think my exposure to that across other police forces as people then become more likely to disclose to the agency because they know it's going to get found.

All right. We now have a lot more information of what Kumanjaya Walker did when he left CAAAPU and what was happening around him before he got to Yuendumu.

Before he got to Yuendumu, an arrest alert had been issued and you gave evidence yesterday about the appropriateness of the content of that, correct?---Yes.

Do you think – sorry, in making a risk assessment, is the focus on the police approach addressing any potential risk to members alone, or is it assessing risk to the target as well?---I think in a broad context, it would be both.

And where there's a tension between the two, which is preferred as the basis for decision-making?---Again, I can't speak for every single decision-maker out there, but I think there's a balance position between both, from my experience.

You would now know from listening in that Kumanjaji Walker attempted to get back into CAAAPU almost the next day. You were aware of those communications and the evidence on that?---In a general sense, your Honour, yes.

Well, specifically, Atkinson was called at CAAAPU and Atkinson reports that, "Sorry that I took off. Can I please come back?" is what Kumanjaji said and he was told, "Sorry, we can't take you back." Now, would you accept as a proposition, that gives you an insight into Kumanjaji Walker that, within hours or at least no more than a day of breaching the condition, he was wanting to repair his situation?---Again, your Honour, I don't know the Northern Territory Police or those members were aware of that though.

Well, that's my point?---Well, if we're not – if the police officers weren't aware of it, I don't know what weight I can put to what they would or wouldn't do, if they didn't know about it.

Others can ask for the references later and I'll give it, but my understanding of the evidence is that the person who contacted police for the issue of an arrest alert gave his phone number and said, "If anymore information is needed, please contact me." So, what I'm trying to drive down to is this, in properly assessing the way in which to apprehend Kumanjaji at any point in time, it would be useful to make sure that all the information available from the agencies, in particular here, quite a simple one, CAAAPU, who have contacted police to issue a warrant, was in a position to be accessed to provide what needed to be known about this offender whose status continues to escalate as things happen, because little was known about what had happened and what he was doing. That's my point and we'll be making submissions about that. But my point is this, how do we improve the capacity to police in communities where there are young vulnerable people who have cognitive deficiencies, disabilities, language issues, lots of things that we've heard lots of evidence from that there are many of these in the community as we speak. How do we look at ways in which arrest attempts properly take into account the known knowledge of that person?---That's a very good question, your Honour, and I think I do see efforts going across the Northern Territory government with initiatives being driven at the moment through information-sharing agreements regarding 360 degrees of a child, a number of attempts to perhaps open up those silos between the different government agencies. That may be of assistance so that there is a greater awareness by, certainly police officers or police members who may

become aware of it, but those things don't currently exist and we would be reliant upon knowledge we got from locally, from what's provided, ultimately, in this case, unfortunately, an arrest warrant. That was the focus.

You would accept that up to 6 November, there was no inherent urgency to apprehend, other than the requirement to, all right? But in terms of factually, and I'm trying to reimagine this outside of being defensive, Deputy Commissioner. I've heard the evidence, that arrest warrants mean you've got to do various things. I understand that. You spoke about discretion?---Yes.

We're looking at a project of improving how people in these communities are safer when confronting police, all right? So my question to you is this, from the time he left to the arrest attempt on 6 November, there was in factual terms no urgency to return him?---Well, that's certainly not demonstrated by the actions that I saw undertaken by Northern Territory police officers who tried to apprehend him at Warlpiri Camp and others prior to getting out there. I think the community-based efforts of Yuendumu police was a different view. They did take steps to engage with the community.

But we're at cross purposes?---So I think the intent was – we were talking about intent earlier, was appropriate.

All right. I'll leave that tick where it is. You had no criticism of the Warlpiri Camp arrest. Correct?---Well, there was no arrest.

THE CORONER: Attempted.

MR BOE: The attempt?---No, there was no arrest there.

No, I apologise. No criticism of the Warlpiri Camp arrest attempt. Is that correct? ---From my viewing, yes, that's correct.

They didn't have an ACPO?---No.

They weren't aware of any of his vulnerabilities?---No.

They didn't know that he had tried to hand himself in, correct?---No.

What time would you like to adjourn for morning tea, your Honour?

THE CORONER: Another ten minutes or so.

MR BOE: Thank you, your Honour?---Thank you, your Honour.

Just to be precise, I want to put to you what I started to talk about in terms of the arrest attempt on 6 November, again, you use language that that attempt was, practised and well founded, correct? That was your language yesterday?---Okay, yes.

And you mentioned earlier that you've got these police with extensive experience in the communities and you rely upon the good judgment of how they go about what they do, correct?---this is the 6th of - - -

The 6th - Hand and Smith?---Okay, yes.

THE CORONER: The axe incident?---Yes, the axe incident, yes, your Honour.

MR BOE: Let me just run through, if I may say, the deficiencies in the speed at which they went to go and attempt that arrest. Dr Freckelton has raised with me that when I put a question to you about knowledge of the funeral that the evidence was that Smith and Hand did not know about the funeral. That's a contestable issue but let me deal with both aspects of that. If they did know, they didn't do anything to accommodate the cultural significance of that. Is that fair?---I think there's some conjecture about the weight they put on that but again, I am not overly critical of that.

But what weight did they put on it by going and arrest him if they did know that there was a funeral in two days' time?---Well, again, that falls back to the powers of individual powers of discretion of an officer that if they felt that that was the appropriate course of action.

If they did know about the funeral they did not know that one of their ACPOs was, in fact, attending that funeral. I put that to an issue of an unawareness of a significant cultural issue affecting policing. Will you accept that?---On the surface, your Honour, yes, I can't recall what they have said, but yes.

They treated the arrest attempt as being required with some mattes or urgency when there were, in fact, none?

THE CORONER: I don't know that I can accept that proposition.

MR BOE: I will put it another way.

THE CORONER: Because there had been the issues with the nursing houses.

MR BOE: I was going to get to that. I understand.

THE CORONER: And there were also the other concerns in relation to the girlfriend.

MR BOE: I was going to get into those, and I will break it up, your Honour.

THE CORONER: Sure.

MR BOE: As her Honour has corrected me, they have spoken about having other factors operating on the timing, correct?---Yes.

One was a perception or a belief - which was mistaken - that Kumanjaya had been involved in the nursing break-ins, correct?---Yes.

And the other was, I think given by Superintendent Nobbs, that because of concerns that Rakeisha needed to be protected, correct?---To that effect, yes, correct.

We can drill down on that detail later, but another aspect of their arrest approach was that there was a clear handling of Rakeisha during the arrest. You saw that in videos and then she screams out and he yells out, "Don't touch her" or something like that. Do you remember that?---I recall there were some words, yes.

There's a degree of sensitivity needed, isn't there, for men to be touching young women - Indigenous women?---I would accept that to a point, your Honour. I think the actions of the police in totality though, have to be considered.

Yes. Well, you would accept that it's been told to us that there are, you know, difficulties associated with manhandling young women in the community, whether by police or others?---I accept some cultural sensitivities, your Honour. I think there was concerns by those arresting members and it was an attempt to prevent his apprehension.

All right, thank you. Just moving to another aspect of it. You indicated yesterday that your viewing of the video, if I may say, accorded with the statements given by Smith and Hand that the utilisation of the axe was more for effect and dramatic and not indicative of an intent to be violent?---That is the evidence they gave and I can understand that and accept that.

You accept that that was a reasonable interpretation?---That's their interpretation, yes.

Now, would you accept that on the face of it, an offender utilising axe towards police puts up an enormous amount of alarm bells for concern. You would accept that, wouldn't you?---Yes.

That description by Smith and Hand ameliorated the risk posed by Kumanjaya surely?---I don't think it ameliorated it. It identified their perception of that arrest and I think was in good consideration for later decision-making what they believed, yes.

Why would that not have been put out for members looking at arrest alerts and say, "Listen he did use an axe." But he is 19, he's got cognitive difficulties and the members say that they felt no further threat from him or to police generally because they felt that the usage of the weapon was more for effect than for use. Isn't that an important piece of information to people strategising risk assessments and tactics? ---Yes. And Sergeant Frost was aware of that.

Yes, I agree. And hence may I say, Sergeant Frost's attempts to further negotiate were of course appropriate given that context. But, the document circulating around Northern Territory Police Force makes no mention of that interpretation of the

members as to the risk that future members should need to - or the factors that the future members needed to take into account in assessing risk assessments as this matter kept going. Would you accept that it should have been in there?---Well, the - in the written plan?

No, in all information that's been circulated to the Northern Territory Police Force members who are statutorily charged with arresting this young man. The only information they had was a serious violent offender?---In terms of how alerts are placed upon the system, I think it was appropriate they put those - they don't write a novel when they put on an alert. They put a high-level alert that would then initiate if you want to delve in deeper to look at the circumstances surrounding it, but the alerts don't include to the depth of information that you're relaying to them.

But it's as misleading alert isn't it, to exclude from it the member's perception of the incident, that they felt no danger and they felt no future danger such that they were postponing arresting him now that they knew that there was funeral?---That was the perspective of two experienced police officers. It might have been a different view from someone else.

THE CORONER: (Inaudible) that they felt no danger in any event.

MR BOE: With respect, your Honour, Sergeant Frost records that that's what Hand said and Hand communicated to Nobbs that very thing by email. And Frost herself - I will lower the tone - all I am saying is, your Honour, the perception taken was that they didn't see that there was urgency. They didn't fear future retribution. They thought he was just making the show to get away.

THE CORONER: Sure.

MR BOE: Anyway, I'll leave it a that for the moment. Is that a convenient time, your Honour?

THE CORONER: Yes, it is, thanks.

WITNESS WITHDREW

ADJOURNED

RESUMED

THE CORONER: Yes, Mr Boe.

MR BOE: Thank you.

MURRAY SMALPAGE:

XXN BY MR BOE:

MR BOE: Thank you. Deputy Commissioner, there's just one matter I wanted to clarify. I had understood wrongly, it seems, that you're going to retire after this inquest. In fact, you're staying on. Is that correct? I'm asking a legitimate question?---I'm subject to, like every other senior executive officer, contract. So my contract is due to expire on February 2024.

Okay, thank you. I just heard you just say that you'd be overseeing the use of force - -?---Whilst – this year, we will be driving – or whilst my contract's in place, I will be absolutely in charge of that process.

Thank you. Just one other question in relation to the Coniston Massacre, in your considering the matters that the executive has been undertaking, is there any evidence that the NTPF made any systemic changes following that event in 1928? ---I'm not aware of that, Mr Boe, sorry.

All right. Just going to a separate issue concerning the communication of the arrest plan, you called it an action plan. There was an issue about the emailing issue? ---Yes.

We've heard that there's a dispute in the evidence as to whether that email was accessed by the IRT. I don't want to get to the bottom of that, it doesn't much matter. Is one possible solution to that disconnect requiring that a document as important as that requires the recipients to acknowledge receipt so that the sender knows comfortably that it's been received?---Read receipt type – read receipt.

Yes?---Yes.

Surely at that point, then the sender knows, I've discharged my duties and the people I want to know what should happen have acknowledged that they've received it?---Agreed.

And I think you've got email programs which have that facility, doesn't it?---I'm not sure that it does for the Northern Territory Police Force, but I would have to check.

Thank you. Yesterday in your evidence around 4065-4066, you focussed attention on the important things to do in relation to the 9 November arrest attempt knowing what had occurred in the axe incident, and you were referred to two things; timings you said, and distance, by reference to the cordon and containment approach. Is

one of the problems with the problems with the arrest plan document was that it conflated two needs on the part of the officer in charge, one being the need to arrest Kumanjaya Walker and the need to have additional resources to deal with other matters in the community?---Well, the evidence as I've understood it to be clarified that for me, that they're not mutually exclusive.

No, no they're not. But if I may say, I thought your description of it as an action plan was apt, because the action plan had two components to it. One was steps to be taken to address the other factors, namely the visible presence driving around was intended to ward off the young people who were breaking in and knowing that police were in town, for example, correct?---Yes.

That wasn't directly related, or at all related, to Kumanjaya Walker, as such, correct? ---I would accept that and I think it provided that ability for a respite for those officers who were - - -

Yes. And one of the problems that occurred, and I'll get to that in a minute, is that when it's in a list of things to do, those quickly reading it may be minded to do things which aren't helping the other thing, which is to gather intelligence about where he is, if you've got high visibility driving around, for example?---I think I've already accepted that, you know, briefing in a SMEAC format would have been probably beneficial to give clarity, a greater clarity around roles and responsibilities.

Now, I just want to got to a point, if I may say, you well made yesterday was that when the four officers, or five officers, left the station around 7 o'clock, they were conducting themselves in the execution of the plan, as opposed to gathering intelligence. You made that point yesterday?---That's how I viewed it, yes.

And even though it wasn't at the time you gave the answer, later on, I just want to emphasise this, is that in order to gather intelligence, ideally, it should be covert, correct?---In my experience, when an officer is tasked to gather intelligence, they would view all that stuff they can gather - - -

Yes?--- - - - covertly or not visibly would assist you in performing the arrest phase, when you get to the point where, now I'm going to – I know where they live. I know all those – as many of those tactical issues that they can gather are apparent, yes.

And in formulating actions to most likely promote a peaceful arrest, the people with the best information, in terms of intelligence, would be the local police?---I agree.

And indeed, more than that, local police who had had experience in arresting Kumanjaya before, correct?---Correct, but the author of the plan was Sergeant Frost who was - - -

Yes, I understand?--- - - - from there.

I understand. It's just that the argument put by Constable Rolfe at various forums is that they went out to gather intelligence to explain why they did what they did. Do

you understand?---Yes.

And if that was in fact their intent, it would have been best to sit down with Frost, Alefaio and ACPO Williams to gather what information they needed to know about their target?---Yeah.

Where he might be, correct? And how he was arrested on prior occasions in a peaceful fashion?---I think from the evidence given, Mr Boe and your Honour, there is evidence that viewing the arrest previous body-worn video, they had – you know, they'd made some intelligence-gathering and information-collecting off their own back as well, but it would have been helpful to supplement that with the local members.

Yes. Yesterday at transcript 4070, you were asked a question by her Honour, the question, maybe it was Dr Freckelton, “Now, do you feel confident that, given the varying accounts of the six persons involved about exactly what took place at any given juncture of that briefing”, or “said briefing”, I should say, you interrupted and said, “Your Honour, I can't conclusively identify why there was a deviation from the written plan.” Do you remember that evidence?---Yes.

And you asked, “Can you account for why there was such an apparent deviation from the plan?---No.” May I suggest that some possibilities are – or some explanations are poor training?---Every member had the same level of training when they went through the college.

Poor comprehension of training. Poor adherence to training?---Yeah, perhaps.

Poor discipline?---Could be.

The personality and mindset of those that were there?---Again I think, your Honour, I think they're all suppositions for me. I've thought long and hard. I can't put my finger on any one of those things.

Well, you accept that?---It could be, I don't know.

It's an indication of poor discipline to not implement a plan?---I would have expected they comply with the plan, yes.

An over-enthusiastic approach to arresting a target?---Again, I'm loath to comment on that statement.

You're loath to comment or loath to agree?---Sorry?

You can disagree or agree, you should comment, if I may say?---Well, then I disagree. I don't know that it was borne on that. I can't - - -

What I'm saying is that they're possible explanations?---They're a supposition of what may have occurred.

THE CORONER: I'm not sure, are you asking for an opinion from an experienced police officer or are these really lay propositions?

MR BOE: I'm asking to – he commented, he was asked this very question by Dr Freckelton and he said he was having difficulties coming up with explanations. I'm making some suggestions which he can adopt or reject.

THE CORONER: I don't think he was asked to come up with explanations. He said that on the material – really on the evidence, he can't account for the deviation on the evidence before us. He wasn't being asked to speculate.

MR BOE: No, he was, with respect. He was asked, "Can you account for why there was such an apparent deviation from the written plan?"

THE CORONER: I think though that the question was directed to the available evidence. Can you account on the evidence for that deviation? I don't think it was just a poor question about speculation.

MR BOE: Thank you, your Honour. I won't press it.

Yesterday you were taken to some data concerning an assessment of use of force incidents broken down to different categories. Do you recall taken from Proctor's report?---If you can refer. I'm happy - - -

I'll take you through it?---Thank you.

The issue was, your response was that there was insufficient data to make a conclusive assessment of whether or not non-Defence and ex-Defence people - - -? ---Yes, your Honour, I do recall.

You understand? And you spoke about the different definition of what use of force was, etcetera?---Yes.

For those following it's in attachment to Proctor's report, "May I suggest this, if you were to focus only upon firearm usage and presentation the graph that I'm looking at suggested that ex-Defence had 10.41 per cent as opposed to non-Defence which was 6.27 per cent. And further Rolfe had 13.64 per cent." Is that not available to be taken as sufficient data that looks at the likelihood or propensity or experience of ex-Defence as opposed to non-Defence resorting to guns?---I think I tried to explain yesterday, your Honour, that in my view that the data wasn't as conclusive as that. I think the ability to identify ADF members is not clear. The data was not clear. The dataset was difficult to interpret. I know when those graphs were prepared that's what as best they could filter that information through from RMIA. But I'm not - - -

May I suggest that your answer yesterday was perfectly accurate? That there's a mixture of actions involved in use of force. I'm not cavilling with that at all. But I'm suggesting that it's open to find that Constable Rolfe resorted to firearm usage and

presentation more than twice non-Defence members. And I would have thought, with respect, that's a finding that clearly can be made on the data you've assembled?---Difficult to answer. I accept that that graph, if that's what it shows then I accept the data as it was interpreted at that point in time. But I would encourage perhaps we try and do a deeper dive again. Again, my analysis that I provided in the third affidavit what was really based upon what I saw was unclean data coming into the first analysis set.

Thank you. You were asked some questions by Dr Freckelton concerning consideration of what other jurisdictions such as New Zealand and the like in terms of carrying Glocks. Do you remember that question?---Yes.

In some parts of that answer you referred to that police, "Had to be ready for all eventualities." Do you remember that line of answer?---Yes.

You wouldn't doubt that that would apply to the police in those jurisdictions as well? ---I think it's very difficult to compare policing in the Northern Territory of Australia to anywhere else in the world, particularly a foreign country.

Would you mind answering the question that one of the reasons that you gave was that police in the territory had to be ready for all eventualities?---I agree with that.

You accept that that's the life of a police anywhere in the world?---To simplify that, Mr Boe, and your Honour, I think that's to simplify access to firearms, the culture of the place.

No, I'm just dealing with that one proposition that you gave. That you said one of the reasons was, "NT Police had to be ready for all eventualities."?---And we do.

And that applies to nearly every police officer in the world?---Correct.

You also agreed to a percentage, or you may have offered it yourself, that 65 per cent of the interactions between Northern Territory Police and the citizens was domestic violence situations?---I think the data I reflect indicates that the response or our effort to responding to family domestic violence encapsulates a significant time portion of our time, yeah.

And the context of that question was as to whether guns should be used in that situation and you gave a response concerning that there can be highly emotional and volatile situations in that sort of context, correct?---Yes.

Do you have any data, and if not should you have, data about how many times guns have been drawn in domestic violence situations to make good your point?---Again I'm not sure, your Honour, what the use of force recorded may not capture the task to which they respond. So, that may be difficult to analyse.

That would be useful wouldn't it for you to point to the volatility and emotions in that situation to warrant a carrying of a gun. You're making that proposition without any data to suggest that guns have ever been drawn in domestic violence situations? ---Well, I think with due respect in my proposition we should always carry guns regardless. I think the Northern Territory Police and police forces in Australia will continue to carry firearms regardless.

I understand the position you take. I'm asking, I want an answer to the question that it would be useful that if you were using that incidents of interaction as a justification you ought to know whether or not guns are drawn in those situations and if so how frequently, was it necessary?---With all due respect on behalf of all police officers I don't think I need a justification to offer to the court, your Honour, that we have to be prepared anywhere, anytime to respond to anything.

You don't think you need to have any data for that proposition?---Well, I'm - - -

Yes or no? I don't care whether you accept or not?---No. I don't think I need data to know that at times police officers need to be armed and need to be ready.

As you know there are some aspects of what happened to Kumanjaya which are more distressing than others. One of them is one that you've correctly said that dragging of any person should not occur and that's always been the case, correct? ---Yes.

Was there any consequence for those officers for having done that?---Mr Porter can perhaps provide greater clarity but it's my understanding they received remedial advice.

Is that in the form of an email sent to the member saying you should not do that again?---I'm not sure, your Honour.

What I've seen is that when there's remedial advice that is sufficiently discharged by an email being sent by a senior officer telling them they should not do something again?---I'm not sure, your Honour.

If that is it that would not be satisfactory would it?

THE CORONER: So, think there's two parts. So, in your understanding is one method of providing remedial advice via email?---It may be appropriate in some circumstances if they're in a remote location to get them to somewhere where a senior officer may be. It could be problematic to achieve that. In the first instance I suspect an email may be appropriate but could perhaps be followed up or should be followed up by a conversation by the senior officer who delivers it.

And I guess the second part of the question is for an issue such as dragging, in your opinion is remedial advice delivered via email a sufficient response?---In relation to the Walker matter, your Honour, I'd have to seek clarity from whether that was in fact they did get remedial advice by email. But depending on the circumstances I think in

some instances it may warrant more than a remedial advice depending on the context at which it occurred.

MR BOE: In this circumstance if that in fact was the result would you regard that as having been adequate?---Yes. I think in terms of providing that remedial advice in writing to record it through our IA pro systems in terms of ensuring that the officer had received it. There was no confusion about getting it. The remedial advice is the lowest end of an outcome and - - -

You spoke yesterday, and her Honour asked you to expand on the notion of what respect is?---Yes.

You would regard this as an extremely disrespectful action to take to an injured young man within the community - in the face of the community?---Dragging always is - - -

In this particular case?---Yes, your Honour, and I think - ideally it wouldn't have occurred - it did. The context of when it happened, the environment in which they did it, I suspect is somewhat different in context than just dragging an intoxicated person or someone else that was not capable. I think there was some context around the sudden need - although it's not acceptable - I'm not offering any explanation. It's different in every circumstance and I don't know that I can, you know, at the Briscoe matter there was clear visibility of people getting, you know, unconscious, dragged around who were - in this case it's totally unacceptable and I accept that, you know, the distress record. They shouldn't have done it, but there was a frantic effort, I think, to remove him from that location.

I am not trying to do a wide-ranging analysis of everything the police do, I am just focussing on what happened at Yuendumu?---Okay, thank you.

And how the family perceived it?---Thank you.

So you saw it - - -

THE CORONER: It's a bit like the guns incident.

MR BOE: I am going to get to that, your Honour.

THE CORONER: Yes, everybody there - well, you would have hoped that everyone there ought to have been aware of the extreme insensitivity of dragging a person and yet that is what occurred and nobody - none of the other police who were present sort or rushed in to rectify that situation?---Correct, your Honour.

MR BOE: And, Deputy Commissioner, it took until yesterday for the Northern Territory Police Force to apologise to the family for that act - that highly disrespectful act. Surely that's not an indication of respect?---I - your Honour, I think that's a - I'd agree - except to a point. I don't know what's happened at local level with local conversations. My apology is on behalf of all of us as a police force, from me as

executive. There may have been conversations held at a local level which I have no knowledge of.

I'm instructed that none whatsoever to apologise for the way in which he was treated on the way to that police station - none whatsoever?---Did I?

No, not you, no. Whomever wishes to speak to the - for the police force, to my clients, yesterday what you said was the first time that there was any acknowledgement that that as something you should apologise for, as a force - and I am going with that, with respect, because you have put it front and centre, the notion of listening and learning and being respectful. I am suggesting to you that whilst my client instructed me to acknowledge your apology, they were having a lot of difficulty accepting it because it comes too little, too late, and that's why I asked the question, do you think those who did that disrespectful act were sufficiently sanctioned by an email - if, in fact, they even got that?---Again, your Honour, I think I'd have to have an opportunity to review - I don't know the specific detail whether they got emails or how that advice was given.

I am sure there will be a - - -?---And I think Mr Porter can provide some clarity around whilst that sanction level was appropriate.

Okay. Another issue and it goes to the issue of dignity and respect. You acknowledge the attempts at preserving Kumanjaji Walker's life by members of the IRT. We went through that. That's been known. One matter that they were not willing to do was perform mouth to mouth resuscitation despite a suggestion by the ambulance officer on the telephone that they should do so - and do so as soon as possible. The body-worn video recordings show that there was a bit of language about how they were not willing to do that and partly because they were police officers who had shot him. They've accepted that there's, in fact, hygienic devices that permit mouth to mouth resuscitation without any question of infection being transmitted. Was that a failing?---Your Honour, I've listened to the evidence. I've read the reports of expert medical advice. My understanding was that it was appropriate and they took appropriate steps to preserve his life.

No, you heard my question. They did not perform mouth to mouth whilst being told that they ought to do so at that point in time by the ambulance officer on the phone? ---I think that was an operational decision, a decision made by those members there and then. I can't - - -

It can't possibly be an operational decision?---Well - - -

Mouth to mouth is a well known internationally acknowledged means of allowing a patient to respire when they're having difficulties. Your officers declined to do so even though there was equipment there that meant they could do it hygienically and safely to them?---Again, your Honour, I can't give context to that. I don't now what have they - what have the officers said?

Sorry?---What did the individual officers say, I can't recall?

They said they wouldn't do it an they gave different reasons, including one - "We're the ones that shot him" or words to that effect?---I think the option to provide mouth to mouth resuscitation should fall back to their training and they should comply with their training, that's my - that's my answer. I don't know in terms of I can give a hard and fast answer in every instance police would do it. In this case they didn't do it, I can't - I can't alter that fact.

They were being asked to do so by the expert ambulance officer on the phone. Right? Part of their training is they decide whether or not they choose to do so or not is what you're saying?---Well, I would expect that they comply with their training, that's what I'm saying.

And not a direction from the ambulance officer?---(No audible response).

All right. Sergeant Frost was a nurse?---Yes.

MR EDWARDSON: She was no longer registered and that ought to be declared.

MR BOE: Yes, I accept that.

MR EDWARDSON: And not practised for many years.

MR BOE: I accept that.

Now, this is an issue that her Honour raised with you when you gave some answers concerning the decision not to allow members of the family to come in and comfort Kumanjayi a the two phases, as Dr Freckelton put it. One when it was clear he was seriously injured and two, when he was dying. Do you accept now - I am sure you have reflected on these overnight but do you accept now that the explanation you gave is not the explanation given by those who made that decision?---I accept that, your Honour. I have had an opportunity to reflect upon my comments yesterday. I still believe that the actions of those members did afford dignity an I've touched upon that yesterday. I think there were a number of other factors that I probably didn't touch upon that equally were probably playing on the minds of those that were present. They include issues such as safety. They include evidence, preservation and they do ultimately reflect upon the plan that they were devising of how they would communicate the passing of Kumanjayi Walker to the broader community and I stand by the fact that we should provide dignity at every opportunity when a person is passing at a particularly graphic death and I don't step away from that. I perhaps didn't explain it to the full context of some of these other factors that clearly were at play.

Can I just ask you some questions about what you've added? What you're now saying is what you've thought of as being possible other explanations to justify that course, is that right? Rather than you consulting those who made the decision. Is that right?---Yes.

Thank you. Secondly, nobody is going to dispute with you that there's a need to provide dignity to somebody in that situation. Do you know that the body-worn video calls him asking of comfort. He is actually pleading for comfort. He's asking for family and the like?---I am aware of that, yes.

So insofar it's affording dignity to him, one of those things might be affording to him what he wanted. Do you accept that?---I accept that's a complex, tough decision.

Do you accept that proposition in (inaudible)?---I accept that our officers have to make tough decisions about what they are going to do.

Yes, I understand. Would you accept that that's one factor to take into account that is what the person is seeking?---That is one factor they may take into account, yes. And insofar as the distress that may be caused to those who may view it, do you accept that one aspect of respecting those people is to give them the option? I'm not saying it's decisive but one aspect of it is, with respect, if my child was in that situation I would like to be given the option of being able to go and comfort them. And I am not putting my own personal circumstances, I am sure many parents would be in that situation. Do you not think it's just simply a matter of decency to give the person dying the option to have - - -?---Well, I find that offensive, quite bluntly, "decency", I find that very offensive to everyone who's trying at that moment in time to help someone.

I don't mean to offend you, I'm putting a proposition to you?---Well - - -

Do you accept that it's an incident of decency to give people a choice about whether or not they weigh up the distress as opposed to the capacity to comfort somebody that's dying?---I do accept that, but again, in terms of operational police in context, it's very difficult when the members themselves were probably in a sense of heightened distress to make - you know, to contemplate all these hard decisions that we sit here three years later and dissect second by second. I'm not trying to be difficult, your Honour, but there was some critical decisions that were made in the very trying circumstances.

I badly phrased the question. I'm not asking for you to make a finding against these people. I'm asking you, looking forward, what are the thoughts that should be applied, and I'll get to the cultural issues in a second. I'm just talking about simple issues of humanity using the definitions you used yesterday about dignity and distress?---So again, in terms of context, in my experience, and I've been at lots of scenes where people are at end of life. And in a clinical environment, a hospital, they don't allow family in while you're doing CPR. They remove them.

Yes, look I've got a limited time. I heard that yesterday. I'm asking you, is it possible that there could be some learnings which might take into account the Indigenous cultural regard for these two issues that you were talking about; dignity and respect? ---Yes, well I accept that. And I think, in a different environment, maybe it would have been a different response.

I'm only focussed on this environment?---Thank you.

In this instance?---Okay.

I'm asking you, is there some learnings that people can take, given you're the 2IC?
---Yes.

That there needs to be some framework within which decisions made about dignity and distress incorporate Indigenous cultural issues about passing and losing and death, surely?---And I think, your Honour, we've already embarked upon that pathway as we're going down it now, to get – by greater awareness. I can't - - -

No, what I asked and gave you an opportunity to say something about it, nothing else came from you yesterday or today about it. That's why I'm asking you?---I'm not sure what response I can provide, your Honour, other than I think we're on that pathway now.

Would you accept that there would be consideration to giving family members some choice?---Dependent on circumstances. I think you can't have one single hard and fast rule here. I think it depends on the inherent circumstances of which they're confronted.

And which leads me to this.

THE CORONER: Well, could it be something like, in all circumstances, if police are present when someone appears to be very ill or passing away, consideration should be given to informing the family and allowing them to have access to the person unless there are exigencies that make that inappropriate?---That could be possible, your Honour, yes.

MR BOE: Thank you, your Honour.

The reasons actually given were from those who were making the decision by reference to their anecdotal experiences dealing with Warlpiri people in excitable situations. I'm just using a general phrase. You know that, don't you? They each spoke about their concerns?---I've heard that evidence, yes.

Others will touch on this, all right. But do you accept that involves a huge generalisation about how Warlpiri people respond to a given situation?---The evidence that I heard was from experienced people who had familiarity in a policing environment and policing context of dealing with Warlpiri people, and that was the basis of their decision-making based on their experience.

Well, I'm saying that there's a fault line in relying on anecdotal experience, is my suggestion to you?---All right, I don't know if I accept that proposition in its totality. I think the experience of our workforce is the strength that at times, prevents further things because they've got relationships, they know people, they work with the community. If they are concerned, I would have thought those concerns should be

considered by others, if experienced members feel that.

Let me be clear, if the evidence permits, the submission that we may make that her Honour make a finding about is that the Northern Territory Police Force's assessment of what cultural factors attending to Warlpiri people is grossly underinformed and not supported by well-known anthropological studies on these issues. That's a submission I'm going to be making. I'm giving you the opportunity to acknowledge that, "Relying on anecdotal experience of police officers, as experienced as they may be, is not sufficient to determine a situation like this by reference to what they do."?---Well, I think there's lots of learnings we can gather from an academic sense, but I don't accept the proposition that experienced police officers who are the people in the field to make those decisions should not carry weight as well. I'm - - -

I'm not saying it shouldn't carry weight, with respect?---Well, so again, I'm not sure what the answer that you're looking for from me, because again, your Honour, I think we are in the process of trying to appreciate, work with, listen to and understand in a deeper way Aboriginal culture. And again, it's a complex operating environment between the legislative frameworks that we operate under, the general orders. It is no simple task by police officers right across the Northern Territory. And I think, as a general rule, they try to operate as best they can within that context. Now, the learning journey that every member of the police force is on doesn't start and stop by reading a general order. It comes with living and working in those communities.

Yes, of course it does, of course it does. I mean like, we're at cross purposes. I'm not suggesting that there aren't decent good police officers who have spent a lifetime operating in these communities in a proper way. I'm not suggesting that for a moment. What I'm asking you to perhaps just accommodate is that, in looking at how to understand a culture, it's not sufficient with some interactions over a basketball court or barbecues or people that you've made friendships with. All Indigenous people are not the same. Cultures are different?---Correct.

So, in order to assist you in assisting your officers to respond in that situation that's non-discriminatory, that they don't say, that's what they do, as being a reason for not allowing the family to come in and comfort their dying child. I mean, with great respect, can you not see how you sitting there now saying that the police force knows everything they need to know because we've got some mates there?---Well, I haven't said that at all.

DR FRECKELTON: That's not a fair way of approaching this, Mr Boe.

MR BOE: All right, I'll withdraw it.

THE CORONER: I guess not all police can be informed to the depth and detail that anthropologists who study work and live in communities can be informed, but of course, we can learn from their articles and experiences. But as I understand it, the real – whilst there's efforts in relation to education and training to improve cultural understanding, CREC by endeavouring to recruit Aboriginal people into stations

throughout the Northern Territory is a very significant resource for officers on the ground to have access to better understandings in relation to the communities that they're working in?---Yes, your Honour. And I think that's the foundation stone that we want to move going forward, so we do not have the same issues arise again.

MR BOE: Yesterday, 4086, you apologised - - -

THE CORONER: I'm just going to interrupt one more time.

That does mean that their expertise needs to be valued and accessed and Mr Boe was making that point in his earlier questions where there were people available who may have been able to inform and assist the police responses in relation to Kumanjayi and there does appear to be a gap between the availability of those resources to assist and the use of those resources by the police on the ground when they were actually making decisions.

DR FRECKELTON: Your Honour, not to disagree with anything you're saying, but the evidence before you is, for instance, that Mr Nobbs spoke to Derek Williams and sought his feedback on the situation at risks, that was important evidence of that, what was said in that context.

THE CORONER: I'm not saying it was across the board.

DR FRECKELTON: No.

THE CORONER: But Mr Boe is pointing out that there were opportunities to access that kind of information and those kinds of resources and people. And perhaps they need to be accessed more regularly, or there should be more training around that, so that people aren't making decisions without accessing appropriate information.

DR FRECKELTON: (Inaudible) with that, your Honour. (inaudible).

MR BOE: Your Honour, is that a convenient time?

THE CORONER: No, Mr Boe, we're just going to sit a bit longer.

MR BOE: I'm happy to. I just - - -

THE CORONER: How much longer have you got, because we have a number of other parties.

MR BOE: I know, there has been consultation about that. I've been given the task of taking the bulk responsibility and there will be every effort to finish today.

THE CORONER: Sure.

MR BOE: Not me, all of us to finish today.

THE CORONER: All right, well because we've had a couple of breaks this morning, we might just keep - - -

MR BOE: I'm happy to do that.

THE CORONER: - - - pressing on for a little bit longer.

MR BOE: Just two or three small points, similar to that that you gave evidence about yesterday. At transcript 4086, you apologised for the late notification of the death which was held up until after the arriving of the TRG. Do you recall?---Yes.

Other people in your command including now Assistant Commissioner Wurst, stood by that decision in particular and any other decision they made. How does that sit with your apology? What are you apologising for, if you're saying that what we did was okay?---The officers at the time were confronted with a situation that they made decisions at that time that they thought were most appropriate to deal with that situation. The purpose of this inquest, and again the reflection piece of the Northern Territory Police Force is to perhaps take time, reflect, dig a bit deeper. I think I've extended that apology on the basis of what I believe and what the Northern Territory Police Force accept could have been done better.

Well, not just that, but is it part of the apology saying that we will make sure that doesn't happen again?---That's the intent, yes.

And despite Assistant Commissioner Wurst saying that he accepts it, that every decision he made was right, there wasn't an Indigenous there that he could trust with the information. All those matters really stick heavily with our clients that, on the one hand, things went not as they should, as considered by you, on the other hand, those who made these decisions stand by them and then you come along and give an apology?---So, I'm giving an apology on behalf of the Northern Territory Police Force as an institution. I think those individual members have given their evidence, as I saw it, truthfully, honestly. I'm not going to rehash their evidence. My recollection though was that Assistant Commissioner Wurst was in text contact with Derek Williams and was taking some advice from him that helped him form his decision-making, right or wrong.

But he withheld that he'd died, his nephew had died. I think there was some – it's my vague recollection of that, without looking at it, he was at least in communication to help his decision-making. It wasn't done - - -

All right, okay?--- - - - in an attempt to inflame the community or to do it to spite the community.

Just for the court, the reference I made when I interrupted Dr Freckelton yesterday about whether or not there were longarms at the – on the occasion that Zhang and others were speaking to the family, it's transcript 2550, where Meacham King acknowledged that longarms were carried by those who were attending to support Zhang and Officer Frost. Next question, you gave answers yesterday which I will

paragraph, but I'll take you to the evidence, if need be. But you were asked about your view of the criminal investigation?---Yes.

And then in response in this instance was that you regarded it as unexceptional. That is, it went as well as it could have. They did everything they could. They put a lot of work in, et cetera. Correct?---That's my belief, yes.

Would you accept that one of the purposes of a criminal investigation is to provide not only the evidence that you put together, but the relevance of it for their use in a potential prosecution. You don't just give statements over. You provide assistance to the prosecution to understand why evidence may be relevant to an issue in the trial?---It is my understanding that's what happened.

Thank you. Now, Superintendent Nobbs here gave evidence after viewing the body-worn videos of the IRT and essentially, he pointed out over quite a number of minutes or hours about everything that was done that was not in accordance with training and the like. Correct?---Yes.

You, yourself, have given evidence along that line. Correct?---Yep.

Does it concern you that there was no statement from any police officer, either you or Nobbs, of that opinion to the prosecution? There was no statement to that effect.

DR DWYER: I have to object. I'm loath to interrupt my friend. But it's not your Honour's function to have an overview of the criminal trial. And I'm just not sure how that assists your Honour in your decision-making process.

MR BOE: No, the point I'm making is that we've got a big tick that the criminal investigation was, with respect, perfect. It did everything that it needed to do.

MR OFFICER: No.

MR BOE: I won't use the word "perfect", was unexceptional. My suggestion to you is that the prosecution did need to have evidence as to whether or not the actions were in fact - - -

THE CORONER: I'm more concerned about the Coronial investigation, so if we can confine it to that.

MR BOE: Well, do you think it was satisfactory that Nobbs had never seen the body-worn videos until he stepped into this court?---I would reflect upon what need he had to look at that body-worn video in terms of his operational duties, unless he was requested to provide some advice or a statement by somebody in authority to address it. I'm not sure that every member of the Northern Territory Police Force would look at the body-worn video.

No, but he's the person that sent them. He gave a statement in which he - - -?
---I think he was a witness at the criminal trial.

No, he gave a statement in the coronial brief as well as to the circumstances in seeking an IRT deployment. It's extremely relevant evidence here. You, yourself, have given it, that those who went out at 7:11 pm did not following training and procedure, but there – the person who sent them has never seen what they actually did until he walked into this inquest, you know, two months ago. Do you think that's satisfactory?---Well, I offer no suggestion on it at all, because I don't quite understand how it was part of his official duties that he would be reviewing that. I mean - - -

Well, why was it part of your official duties to give that very evidence?---Well again, I think the investigation was appropriate.

All right, but it wasn't – it didn't include this critical evidence, assessment by senior command that what the IRT did, did not follow training and instruction?---Well, I think that evidence has been thrashed around to death with the inquest and I believe at the trial.

Well, it wasn't at the trial, with respect. There's no police statement to that effect? ---I accept that, if that's what you say, I accept that, but I don't know the relevance of it.

Are you confident that all - in the criminal investigation, that all relevant text messages that go to the state of mind by Constable Rolfe were provided to those prosecuting?

MR OFFICER: Your Honour, I object. We've made it clear very much in the Coronial investigation, what was or wasn't done (inaudible).

MR BOE: I can understand the sensitivity. I'm not – shut the gate, the horse has bolted. He's acquitted. But there's a grave concern that this inquiry has exposed numerous text messages which are far more temporally relevant to the state of mind which were not the part of applications for admission in the criminal trial. That's all well-known. My point of the exercise is simply to address the proposition led by Dr Freckelton that the coronial investigation and the criminal investigation were unexceptional. With great respect, I will be making a submission that those text messages which go to his state of mind, and therefore why are they irrelevant here, one – two weeks before the shooting, were not the subject of applications for admission.

THE CORONER: I don't know anything about that, but perhaps the question that could be asked would be, when did all of those text messages become part of the combined brief of evidence.

MR BOE: I'm content with that, your Honour, thank you. Deputy Commissioner? ---I'll take that on notice, I'm not sure of that date.

Do you know any of the detail of what evidence was put together in the criminal brief.

DR DWYER: I'm sorry, your Honour, I've got to join Mr Officer in the objection.

MR BOE: I withdraw that. Time is too short. I'm too old.

MR OFFICER: (inaudible).

MR BOE: No, no.

THE CORONER: I don't think this goes to that.

MR OFFICER: (inaudible).

MR BOE: How could it possibly?

MR OFFICER: You're raising points – start questioning about what may or may not have been made by the prosecutor and whether or not any of that is relevant (inaudible).

MR BOE: I haven't done any of that yet.

MR OFFICER: (inaudible).

MR BOE: Your Honour, I have not done any of those things.

MR OFFICER: (inaudible).

MR BOE: Well, object when I do it. I'm not doing that. I'm not going to second-guess the decisions that were made. I'm not here to do that. I'm responding to the evidence led by Dr Freckelton that the second most senior officer in the Northern Territory Police Force - - -

THE CORONER: Sure. Will it assist you if we simply find out when all the text messages were first made available as part of the briefs of evidence - - -

MR BOE: Yes, your Honour.

THE CORONER: - - - which are effectively very much combined.

MR BOE: I've made - yes.

DR DWYER: And I can assist Mr Boe with that over the break and we can see if we can - - -

THE CORONER: Sure.

DR DWYER: - - - assist the families to understand better.

MR BOE: Yesterday, you gave evidence concerning the positive attributes that ex-ADF members being recruited might bring to the Northern Territory Police Force?
---Yes.

Do you accept that there are potentially negative attributes that you need to be aware of?---Not just the ADF, your Honour, yeah any employee.

Sorry, I just didn't hear you?---Not just the ADF, any employee, yes, anyone would.

No, but by – from that cohort, may I suggest that matters that should be investigated at least is that we now know that ADF training may well have a psychological impact upon members who undergo that training?---Potentially, yes.

And that they may suffer from trauma from deployment?---Yes.

They may have an overzealous loyalty to other ex-ADF members in the police service because of their experiences of having served with brothers in arms?---Well again, that's a supposition. I don't know that I form that necessary belief. No, I don't agree with that.

It goes to that issue about the reporting of mental health issues. If you've got a close affiliation with somebody with a similar experience as you, you're going to less likely take action that might bring them to account, because you want to be protective of them. And that can be instilled in you through service?---I think that's oversimplifying it, but I can see your point.

Okay, thank you. Is there a sense that those with ADF experience regard themselves as being more physically and weapon-wise capable than those who have not had that training?---Again, I'm not going to draw a generalisation I think between which service you've come from, which arm of the service you've come from. You know, airman prepares jet engines, you may not have the same level of -
--

Let's not get distracted?---I'm not distracted.

Specifically in this case, we know that a former ADF colleague - - -?---Yep.

- - - had text exchanges in deciding to become a member of the police service because of Rolfe's suggestion that it was a good thing to do. You know of that exchange?---Mm mm.

And you also know that that person became a member of the IRT on the say so of Rolfe and could tag along to shooting exercises. That's what I'm talking about, in the sense of, because of that familiarity, that they are given - you know, they take a different approach to their skills against others. I can trust him, because I was in the army, he'd be a great fit for the IRT?---Well again, I don't know that it's that cut and dry. No, I don't accept that. That's just blind trust, just because you're a former member of the ADF.

Okay. Do you accept that service abroad in active duty may cause those who do so to form negative attitudes towards risk targets and enemy targets?---Again your Honour, I think that target is a very small portion of our ADF members who may be members of the Northern Territory Police Force. I don't those that have actually served in combat roles, to be honest. I suspect in combat roles, you may have a different function than if you were a clerk or a cook or a - - -

I understand. I take it you're not legally trained?---Sorry?

You're not legally educated? You don't have a Law degree?---No.

No. You're aware of s 148B of the *Police Administration Act*?---If you could refresh my memory.

It's the immunity provision. You're aware of that?---I'm aware they're subject to lengthy legal arguments.

Yes, well I'm going to get to that. Are you aware of it having been passed pursuant to amendments in August 2019.

DR FRECKELTON: Your Honour, I object to this line of questioning, it's not appropriate for a non-licensed - - -

MR BOE: No, I haven't got to that yet. He's a Commissioner of Police representative. It's a provision that applies to all his members. I'm entitled to ask him some questions about that.

DR FRECKELTON: No further on it, but there's nowhere to object to matters legal - - -

MR BOE: I'm not asking him to make a legal answer.

DR FRECKELTON: Well, the first question that's been asked of him is whether he was aware of the process leading toward an amendment to legislation.

MR BOE: I said, "Are you aware that it came into force - - -

THE CORONER: He might be aware of it, but I mean, I think just – if we just get to the question - - -

MR BOE: I will.

THE CORONER: - - - rather than the background to the question.

MR BOE: Yes.

THE CORONER: And then we'll see if the question is helpful.

MR BOE: I'll get to the last question. If I need to go back to assist you, I will. Can you appreciate that having a special immunity from a police officer for criminal conduct is a matter that may concern some members of the Yapa community? ---I can understand that, without perhaps a deeper understanding, but there would be that confusion, yes.

Yes. I take it you're not aware of any of the High Court's consideration of these matters?---I haven't - - -

It's okay, I'm just giving you the - - -?---I haven't studied them. No, I haven't studied them in detail.

All right. Now, the final part of my questioning, I will go to some findings that her Honour may be asked to consider.

Would your Honour allow me to adjourn now and gather my thoughts to keep it succinct?

THE CORONER: Sure.

MR BOE: I don't think I'll be much more than 15 or 20 minutes to finish.

THE CORONER: All right. Look, it's ten to 1:00, but we're going to come back at 1:30, if that's suitable.

MR BOE: Thank you, your Honour.

ADJOURNED

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MURRAY SMALPAGE:

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THE CORONER: Yes, Mr Boe.

MR BOE: Thank you, your Honour.

Deputy Commissioner, one of the issues – sorry, I think counsel assisting wanted to - - -

DR DWYER: Your Honour, Mr Boe raised the issue in relation to the availability of the text messages. I note that they are on our brief in a particular format. They're also within the brief, as the Coronial Brief was provided there was an original download of about 16,000 pages. And in the brief of evidence at 3-160 is the statement of Mr Fhat Pham, P-H-A-M for the transcript, dated 18 March 2021 where he indicates that he provided an extraction of the phone to the Northern Territory Police in October 2020.

In the brief at 7-142 is the statement of Senior Constable Brett Wilson who notes that he had the phone extraction and it's clear that that statement was available on the Criminal Brief if that assists my friend.

THE CORONER: Yes, thank you.

MR BOE: Thank you, your Honour.

Deputy Commissioner, as I said earlier I was going to take you to 12 findings that, or 14 findings on four of the issues that counsel assisting identified at the outset. But before I do that one finding relates to the notion of enquiring whether or not there is institutional systemic racism in the Northern Territory Police Force. I know that you addressed some of those issues or your view on those matter in your statement. May I ask you this question, from what I read of what you had written you would reject that there is systemic racism in the Northern Territory Police Force. Is that fair?---That's my fervent belief, your Honour.

In expressing that view what definition have you used to form that view?---I think I touched upon it briefly. I've travelled extensively through the Northern Territory. I've spoken to hundreds if not, well, hundreds of Northern Territory Police members.

THE CORONER: I think you might have missed the question. The question was what do you understand by the terms systemic racism?---Okay, my apologies, your Honour.

No, that's okay.

MR BOE: Rather than how you came to your conclusion?---Well, I came to my conclusion as I was leading by my experience.

THE CORONER: So, the conclusion that he came to is based on the evidence and his experience. But I thought your question was what do you understand or what do you mean by the term systemic racism.

MR BOE: It is?---I think if, again, give me a couple of seconds to collect my thoughts. I suspect it relates to policies and systems that perpetuate that allow continued racist practice.

In your study module for induction for new recruits at page 80 there's a series of questions which comprise a quiz and question 11 asks the question "systemic racism means" and it gives three alternatives. And the writers of the report say that the correct answer is, "(c) unfair treatment of people through rules, policies and procedures by organisations." And the answer is to be, the correct is yes (c) organisations or system that disadvantage people. Now, that definition is provided to your recruits as to what systemic racism means. Did you know that? ---I think I've done that online course that covers those questions.

You would have seen in the expert report from Professor Watego and others that they give a more detailed explanation of what might be an appropriate definition. Have you seen that?

THE CORONER: I don't know that he's seen that report, Mr Boe.

MR BOE: Is it not in evidence?

THE CORONER: Yes, it's subject to objections.

MR BOE: I apologise, I apologise.

THE CORONER: But you can certainly put a definition that is an alternative definition.

MR BOE: In having a view about it would you accept, for example, that a definition used by the Australian Human Rights Commission might be a useful start?---It could be, yes.

In your explanations for why you say that there is no systemic racism you explain that there seems to be a small number of instances of overt and covert racism uncovered in the evidence in this inquest. That's one of the points you make?---One of the avenues, yes.

And you also point to the fact that there's evidence of police officers who are clearly not racist, indeed quite the contrary?---Yes.

Did you mean to import in to your conclusion that whether or not there is systemic racism turns on the proportion of people within the institution that may act or speak in a racist way?---That may have some bearing but not in its totality.

So, when we've heard in this case about various actions and steps taken by police which had views about, say, for example, Walpiri culture they're matters relevant to understanding whether or not there is unfair treatment of people through policies and procedures. Would you accept that?---Walpiri people?

Whether it be Walpiri, Arrernte . I say Walpiri because that's been the community that those who have expressed those comments that I referred to earlier to explain why they did or did not do things is because of their knowledge of - - -?---I accept it to a point. However, my exposure and experience is culture is often linked to a place or a locality and the culture of a place will vary and whilst there may be some generic cultural similarities, I think police need to be responsive of the culture of the place in which they police and that varies.

All right, thank you. The approach taken by - sorry - a definition - I will put to you and see if you are willing to accept it as the term that we should be using in addressing your answer. The Australian Human Rights Commission defines systemic racism in this way, quote;

Systemic racism refers to the history, ideology, culture and interactions of institutions and policies that work together to perpetuate inequity. It describes a way in which institutions and structures fail to provide adequate service provision and equal opportunities to people because of their racial or cultural background. System racism is responsible for certain communities experiencing poor life outcomes, lower pay and less opportunity for advancement within leadership positions.

Would you, speaking for the force, be willing to embrace that as an acceptable condition?---I would like more time, obviously, to reflect upon that and consider its implications but in its principle as you outlined to me, I don't have a strong objection to that language at all.

And may I add the author's - sorry - there's some conversation that that may not be the most useful was to embrace it. In the United Kingdom there was an enquiry called the "Stephen Lawrence Inquiry"?---Yes.

In it they describe the concept as being, "The collective failure of an organisation to provide an adequate and professional service to people because of their colour, culture or ethnic origin. It can be seen, detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people." Would you be willing to embrace that definition?---Again, your Honour, I don't - it needs time to digest it and consider it fully and its application to the Northern Territory Police Force but I am not opposing those concepts for our organisation at all.

Why I put it to you in that way is this, when you assert in an affidavit that there is no systemic racism, it's difficult for us to read it and understand what you are meaning and if we have an agreed to definition, it allows those who are addressing that issue to make submission, whether or not there is evidence which falls into an agreed definition. Do you understand?---Yes.

And are you saying that you are willing to consider it and come back to the - - -?
---I think these options for the Northern Territory Police Force to consider everything that is put before this inquest - - -

Well, that - - -?---In the spirit of trying to be better. I mean, I don't know that I can give a more succinct answer without knowing, you know and having a chance to digest it in greater detail, I am sorry.

I haven't put you on notice. What I am trying to get to is this, it would be unuseful for you to make a statement that something doesn't exist if the definition you are using doesn't adequately encapsulate the learnings throughout the world about what can amount to systemic racism. Would you agree with that? You can't work on an easy definition to suit your purposes - I am not saying that's what you're doing?---Well, conversely, the definition you've related is not one that formed the basis of which I've written my deposition either, so again - - -

That's why I am giving you the opportunity?---So I'll come back to what my intent for the deposition - in my belief - I don't believe. I've stated that in my deposition. I don't believe - I think with the opportunity to consider 14 - two - three different definitions of that I may have a slight nuance of it but I still come back to my basic premise of where I start with that. I don't believe that we have systemic racism in the Northern Territory Police Force - that I am aware of.

All right. May I just go to some findings and ask you to comment or agree, hopefully with what I do?---Thank you.

Would you accept that Kumanjaya Walker's death on 9 November 2019, was avoidable if all of the matters that you've set out as having been changes in the way the Northern Territory Police Force approaches a situation like this, have been in place?---Again, and I am not trying to be obstructionist or difficult. The evidence is unclear. I think the things we've talked about in my affidavit and we've discussed here would have helped reduce and mitigate the risk of that occurring, but I can't guarantee that with any degree of certainty. I would hope not.

Yes. I didn't put "Would have been avoided" I will just put to you "was avoidable"?
---Difficult.

I understand?---As I said, had we stuck to the plan perhaps we'd have a different outcome.

All right. Do you accept that there was inadequate induction processes at the Yuendumu Police Station as at November 2019 to ensure that key issues relevant to Yuendumu were understood by members placed to work there?---I think - I'm not convinced that they were no good. What I am - - -

I should use the word "adequate"?---Well, I think for 2019 I think they were adequate. I think we've enhanced them - - -

For now - for now. Were they then inadequate?---Well, they're not as comprehensive as they are now.

Right?---And I think it forces a greater comprehension and understanding but I come back to the evidence that I've heard. Derek Williams was there. He's a senior Aboriginal law man in that community and he was part of the team.

Well, he wasn't part of the arrest team?---No, but he was part of the Yuendumu police team.

Do you accept that there were insufficient instructions to members at Yuendumu in November 2019 about cultural matters to perform their duties in particular about Mulla Mulla or sorry business, gender appropriate policing and utilisation of APOs? I can break that down if you want that broken down?---I think we've discussed this already today and I've indicated that I think it would've been much more helpful had they of been specific in communicating to the family what "after the funeral" meant, so there was some clarity around what timings, if the community could influence him to surrender. The availability of resources I think drove the decision-making that happened at that time because they simply didn't have all those other resources available to provide that advice that would've assisted.

Do you accept that there were inadequate systems at Yuendumu Police Station to record and maintain knowledge of the community and its members relevant for policing duties?---In my interpretation of your words I take "systems" is what we are referring to here? I think there were systems in place even if they were informal, even if they weren't documented I think there was a - certainly a system in place where there was communication across the membership of the Yuendumu Police Station. Could it be better? Absolutely.

Do you think undocumented and informal systems are sufficient for the operation of a police station in this situation?---Well, the reality of it is, your Honour, and within the context of a broad and diverse locality of the Northern Territory, a lot of the information that is held is informal and local, it's not necessarily all documented in nice, Excel spreadsheets and some of the stuff we're trying to work upon as we talked about police handbook, some of those other general order re-writes all trying at the moment to modernise outdated policies may have assisted.

Do you accept that the induction processes require more clarity as to culturally important matters that relate to Yuendumu such as Mulla Mulla as in sorry business or Kapan Kapunta(?) as in traditional punishment, gender appropriate behaviour and

other culturally appropriate conduct to ensure that you are servicing this community in an adequate fashion?---I think that would be best practice, yes.

Would you be amenable to the review of your induction processes to be routinely updated, say biannually, that's in every two years or so, so as to ensure that contemporary learning to knowledge is in fact invested back into your induction process?---Yes I do and I think, you know, it should be a living document and as we become aware of things we should update it as appropriate.

Do you see the usefulness of that updating be conducted after external review from experts in this area to assist you in ensuring that you are taking on board knowledge outside of the force?---In generic principle I think that's what we're trying to do now. I'm not quite sure what you mean by external. We have a number of really strong culturally competent people who can provide great advice to us now. But I'm not opposed to anything that's going to improve our community relationships.

Sorry, it's not so much a matter of opposition. By external means, outside of the knowledge held by the force and I use that Collingwood example?---Thank you. I suppose, your Honour, I think we're already to some extent doing that to a greater or lesser extent with our induction programs where we bring in external, but not police officers. We bring people from the community. We bring culturally competent people from outside of the Northern Territory Police Force to give us guidance, advice, direction. And we do that now and we're always looking for opportunities to improve upon that. The community resilience and engagement command is the cornerstone, as I said, for that whole new pathway forward.

Thank you. Do you accept that the arrest attempt on 6 November 2019 should not have occurred during Nulla Nulla sorry business for Kumanjayi's grandfather?---6/19 being the?

The axe incident?---Again, I come back to the perplexities of police officers. There is a need to understand cultural awareness. However, the processes they were about to execute were lawful. That clash between cultural appropriateness and lawful execution of their duties is always going to be a challenge for our officers. And, as I said, all these things that we're talking about hopefully drive better informed decisions. I'm not going to condemn them for what they thought was doing their duty.

I'm not asking you to condemn anyone except perhaps me for asking you these questions. Do you accept that the arrest attempt on 6 November 2019 did not take in to proper account Kumanjayi's cognitive vulnerabilities including his hearing impairment, FASD nor accommodate his likely response to being apprehended during Mulla Mulla?---I think from the evidence I've heard that officers involved in that attempted arrest were aware of information concerning him. I don't know how much weight they played on the cultural significance of the funeral. But again I think their tactical operations on the ground were appropriate, the arrest of a person.

I wasn't asking about that. I can get through this really quickly if you just agree or disagree?---Thank you, thank you.

Do you accept that that arrest attempt did not utilise the resources available from Senior ACPO Derek Williams and that it should have?---My suggestion is no it could have.

Do you accept that there were significant miscommunications between IOC Sergeant Julie Frost, ACPO Derek Williams and Kumanjayi Walker's family following the axe incident?---Insofar as specificity around timings of when he should hand himself in, I think that could have been delivered with greater clarity, yes.

Well, I'll put it the other way. There was a significant miscommunication. I'm not saying whose fault it was?---I think the intent, and we've heard much about arrests and culture awareness, the police were attempting to get him to surrender after being confronted.

You heard my question?---Well, I - - -

Part in pain, do you accept that there was significant miscommunications?---I accept there was some miscommunications.

Next one, do you accept that there were significant miscommunications between the community police officers on the one hand, that's including Frost, and senior command in Alice Springs, Wurst and Watch Commander Furniss and in Darwin Jody Nobbs in the formulation of a culturally sensitive and peaceful arrest plan?---No I think the plan was appropriate.

Well, it may have been appropriate but do you accept, for example, that Knobbs says that he was asking for an IRT deployment and Wurst says, "I didn't understand that to be the case." That's a miscommunication surely?---It was my understanding Wurst's knowledge was it was a general support deployment. It wasn't a high risk deployment. I think that's the nuance.

You know that they disagree as to what each was asking to the other?---I accept that even if that is the proposition but I think the reality it wasn't a high. It's my understanding there's no miscommunications that it was a general deployment.

The evidence - we can consider that later. My suggestion to you is this, Wurst in his position as assistant commissioner authorised the deployment of an IRT which was required at that level without having read the SAP for the authorisation. Do you accept that?---Again yes but to the point so far as I thought an assistant commissioner's not really in the SOPs of the IRT deployment. He was the approver and I think the evidence, as my recollection, the evidence has been that he was only acting as an assistant commissioner because Commander Currie was not available. It didn't require assistant commissioner approval under the general order. He just did it because he was - - -

Are you seriously saying that an SOP that deploys a paramilitary force into a community which requires an assistant commissioner did not need to know what the SOP was for that deployment?

DR FRECKLETON: I object to the question as it's phrased, your Honour, because the evidence before you is that if it was a high risk deployment it required an assistant commissioner. If it was a general duties deployment it did not.

MR BOE: And the miscommunication there is that Nobbs was asking for high risk deployment and Wurst thought he was deploying a general duties deployment? ---That's not my understanding of it.

Well, I'll stand corrected with the transcript but I won't bother you with that now. You don't regard that as a miscommunication?

THE CORONER: I don't think he accepts the premise.

MR BOE: Premise, all right.

THE CORONER: If that was correct then it would appear to be a miscommunication whether the deputy commissioner agrees with it or not if that is the correct evidence.

MR BOE: I understand, and I have yet to see it, that there's going to be a system to replace PROMIS. Is that correct?---Correct.

I can only focus on what was in place in 2019. Do you accept that the risk assessment system communicated through PROMIS was inadequate to permit the formulation of a safe and appropriate plan to arrest Kumanjayi Walker?---PROMIS. PROMIS is on the fact, your Honour, that as the deputy commissioner I've never actually used PROMIS. But my advice from those who regularly use it, it doesn't have that risk assessment tool built into it. It doesn't have that now. The ServPro replacement is working on ways we can incorporate a risk assessment tool potentially into our PROMIS replacement.

Do you accept that what other system was being used that the risk assessment which was broadcast to the Northern Territory Police Force members in relation to Kumanjayi Walker was grossly inadequate to allow for the formulation of a safe and appropriate plan to arrest Kumanjayi Walker?---I think no. From my experience and from the visibility of the evidence I've heard before me those alerts were appropriate. Would capture someone's attention to force them to look further.

Moving on to the IRT. Do you accept that the IRT was not fit for purpose for deployment at Yuendumu as at 9 November 2019? I'll go to the four propositions but maybe we can get to that conclusion if I go through the four propositions?---Yes, please.

One, it did not have in place an adequate command structure or standard operating procedure, to ensure the appropriate deployment of it as a team?---If they were

deployed in a high risk approval, I would accept that premise. They were deployed in general support. So they were under the control of Sergeant Frost. They – you know, it was routine general duties policing, which every member of the Northern Territory Police Force is familiar with.

The IRT had no adequate process for the selection of members of an IR team – IRT team, especially when it may be utilised in a remote community. Would you accept that?---Well we no longer have an IRT. We got rid of it.

But sometimes, moving forward, acknowledges mistakes?---I think the removal of the IRT is a reflection that we think the Tactical Response Group is the far better solution, and proposition and method moving forward to ensure that there is enhanced risks assessments.

You've got a report – you've got a report from which, I'm putting this propositions to you, that say these very things, don't they? That there was no appropriate command structure. That there was no appropriate system for selection of members?
---I accept that premise, yep.

And it had no adequate system to designate a team leader to make operational decisions?---I – I accept that that's the premise. But I think the reality is, if I revert back to operational policing, the most senior member is always in charge.

Yes?---In the absence of anything formalised.

I think you accepted yesterday, to her Honour's – or the day before, observation made - - -

THE CORONER: There was – no, but there's still confusion who the most senior member is. Is it the most senior member who's been attached to IRT? Or is it the longest serving officer in the police service? I think there's – leaving it up to decisions on the ground is opening up confusion and error.

MR BOE: That's why I put the proposition - - - ?---Well your Honour, if I can – if I can expand on that a little bit. Because there is some clarity on this process around if you're – if it's a general deployment, I don't think there is any confusion about clarity of command. But I can indicate, when you have specialist deployment, high risk deployment like the Tactical Response – the Territory Response Group, the TRG, command of control will always rest with the forward commander of the TRG. It doesn't pass to the police forward commander. The tactics – initiatives they deploy, they present to the forward commander, and they are approved, or otherwise. But they don't – the police woman doesn't make those - - -

Deputy Commissioner, I'm trying to stay focused on what - - - ?---So sorry, I'm - - -

- - - one can easily accept that a TRG - - - ?---Yep.

- - - when deployed, would be addressing a highly unique, or - - - ?---Yes.

- - - situation, which needs regard to resources outside of the knowledge and experience of an OIC. That's easily understood. I guess if we take the IRT label out of it, that when a team, exterior to the community, goes into a community, surely it needs to have a system to delegate a team leader, of that team?---That would have great – yes, I – it would have greatly assisted if they'd have left, they had have known who was in charge of that team.

And that – and that team leader fulfils two functions, if I say - - - ?---Yeah.

- - - even if the forward commander is OIC Frost, somebody need to be communicating to the forward commander, of what the team is doing, surely?---But I think they fall under the command of Sergeant Frost who directs that team - - -

Yes?---Not the other way around.

But he's not there – she is not there?---Well she was there when they - - -

She wasn't where they were at 511 and 571 - - - ?---Okay.

- - - (inaudible) - - - ?---Has - - -

- - - yes, and I think Sergeant – Superintendent Nobbs himself, said he expected that the team would communicate back to him, before they departed from the plan, that Frost had designed. So, that needs somebody, doesn't it? One person to say, I'm in charge, everybody else knows I'm in charge of this team, to be that conduit?---Yes.

And to make operational decisions?---Yes.

Would you accept that there was no, or no sufficient communication, between the Northern Territory Police Force and NT Health, to ensure that medical support was available, in the event that gun shots were fired, or an individual was otherwise seriously wounded, for example, from the police dog, during the arrest attempt? ---Your Honour, it's a difficult question to answer, it isn't a simple answer. And I'm trying to restrict it, Mr Boe. It – the discharge of firearms by police is highly irregular. It's not a common occurrence. I don't know that it would fall to our normal planning, that we'd have an ambulance or medics that we would check to see if they're on every time we deploy for an arrest operation. We don't do that routinely, no. We don't do that.

Do – do you accept, skipping through the preliminary steps to this, but – because you've already said this. Do you accept that the attempt to arrest Kumanjayi by entering House 511, was flawed in approach and execution?---I think it being – could have been delivered better, yes.

I just didn't hear you?---Could have been delivered, yes, better, yes.

Well do you accept that it was flawed?---Well it's not in accordance with the plan, yes.

So yes to the question?---Yes.

Thank you. Do you accept that that entry created an officer created jeopardy in the way in which other senior officers have described?---The non-adherence to the plan causes significant flow-on down-stream, problems, because it's not – in my mind, it takes us back to the events on the sixth. On the attempted arrest with the axe incident. And similar tactics are employed twice, and I think it could have been much better delivered, yeah.

Was the entry one that created an officer created jeopardy situation, as that term was used by senior police?---Again I haven't – I don't know if I've heard that in this inquest, Mr Boe, but I think there could have been better tactical options, absolutely, yes.

Well Pollock uses that term?---Okay. Yes, I think there is a degree of - - -

You accept that?---Yes.

Do you accept that after being charged with murder, the member responsible for the shooting, Constable Rolfe, was given preferential treatment, because he was a police officer, in terms of the speed, manner, and submissions made and not made, as to his application for bail?---No.

THE CORONER: I'm not sure that this is relevant to my inquest, Mr Boe.

MR BOE: I'm trying – can I just make a brief submission about that. It's an issue – no one would say that police, in dealing with an arrestee, should not be extremely considerate of the arrestee's circumstances, or that bail should not be – not opposed, in the right circumstances. The question is – the question, which is leading to a finding we hope to make, is that the way in which Constable Rolfe was treated, was in a way that was totally inconsistent with the way in which other arrest targets, who are Indigenous, are treated.

But I won't press it if you don't wish for me to ask the questions. I'm explaining why it is I'm asking the question.

DR FRECKELTON: We respectfully say that the connection to the death is tenuous, and that it falls outside of the agreed scope of your Honour's inquest.

THE CORONER: I'm not going to permit the questions, Mr Boe.

MR BOE: As your Honour pleases.

THE CORONER: We haven't – we haven't examined that at all - - -

MR BOE: Well the evidence has - - -

THE CORONER: - - - and it would be opening up a whole new area, and I'm not going to do that.

MR BOE: I understand. As your Honour pleases, those are my questions of this witness.

THE CORONER: Thank you, Mr Boe.

Other questions.

Mr Mullins.

MR MULLINS: Thank you, your Honour.

XXN BY MR MULLINS:

MR MULLINS: Deputy Commissioner, my name is Mullins. I appear on behalf of the Brown family?---Yes Mr Mullins.

You were asked some questions most recently about problems with the Standard Operating Procedures. And you address those issues in your statement, document 7-120A, at par 139.

THE CORONER: That's the first statement.

MR MULLINS: First affidavit - sorry. It's paragraph 139?---Yes.

And in fact if we go back to - I apologise - 138, you make reference to the fact that Detective Senior Sergeant Lee Morgan reviewed the IRT Standard Operating Procedures and made certain recommendations and that at 139 you make reference to the reviews conducted by Dr Narelle - Assistant Commissioner Beer and Superintendent Gill, that's right?---Yes, correct.

And those four shortfalls you identify at par 139 (i) - sorry, there's actually five - through (v) you agree with?---Yes.

And (i) "A lack of clarity regarding members considered to be operational IRT members." I won't bother you with that.

(ii) "A lack of risk assessment prior to deployment." I am going to put that aside for the moment?---Yes.

(iii) "Lack of planned response methodology" and

(v) "A lack of engagement with police forward commanders."

Now, when we are looking at this issue for these purposes, that I am just questioning you now, we are simply analysing the systemic issue of what is contained within the Standard Operating Procedures. That's right? You understand?---Yes.

Now, the Standard Operating Procedure is very important for the operation of the particular unit?---Yes.

And it's important that the members who are going to be part of that unit are trained in the Standard Operating Procedures?---Yes.

And it's important that the people who are conducting the training and who are part of the organisation, are undertaking the tasks of the particular unit, are also familiar with the standard operating procedures?---Yes.

These are matters of common sense, aren't they?---Yes.

And you point out at par 140 in the first sentence, "The NTPF complied with the approval process for the deployment of IRT in a general support role" that is as you said on many occasions today. That's right?---Yes.

"But there were shortfalls regarding the effective communication of the requested approval and subsequent attendance of IRT members." Were the shortfalls you're referring there, are they in the execution or in the Standard Operating Procedure? ---I think perhaps both, in terms of what was communicated against the SOP.

Well, the next sentence might help us. "This included issues in relation to the specific roles, tasks and priorities the members of the IRT were to fulfil." Is it the case that on your reading of the SOP - Standard Operating Procedure - that there was not a clear definition of who had responsibility for what?---Again, the plan for general support, which was the plan of Sergeant Frost, I think had the greater clarity around what was to occur as opposed to the SOP which I think was fairly generic and in many instances it referred to a higher risk operation.

So insofar as the SOP as a whole is concerned, both addressing the higher risk deployment and the general support role, it was important that the IRT members knew who had responsibility and what their roles were?---Yes.

It was important that they knew who to take instructions from?---Yes.

It was important in the general support role, to understand the interface between the forward commander - in this case Sergeant Frost - and the members of the IRT? ---Yes.

And you would've thought that those matters would be explained in some detail in the training program for the IRT so that during the course of training members understood that?---Yes, and no. The SOPs I think are based more on the structure of the TRG SOPs than that of the general operational - general support deployment

and I think some focus has been around the specialist nature of the high-risk deployment component as opposed to the general duties - general support portion of it. Underpinning both though, I agree that we should have clear direction about who is in charge, reporting guidelines and, from my experience, that is well known throughout the Northern Territory Police Force and it's worn on our shoulders, it's called "rank".

So do you suggest that the IRT members on this particular occasion, should well have known that the forward commander - Sergeant Frost - was the person who they answered to in terms of direction?---Yes.

There was another problem with the Standard Operating Procedures that emerged from the evidence of Sergeant McCormack which is at par 2194 of the transcript, page one back of the document that I sent to you. We'll just get that up on the screen. And while we're doing that can you just explain your understanding of Sergeant McCormack's role in the deployment of the IRT on this occasion?---He was the unofficial - as I understand it - second in charge. Sergeant Bauwens was on leave and he stepped into the void to provide IRT coordination for deployment.

If we look on the page 2194 in a few moments.

THE CORONER: There's no pressure there.

MR MULLINS: No, that's okay. I'm happy to - Ms Wells might be able to show it to you on an iPad. I'm happy to read it out?---That would be fine.

So Sergeant McCormack was asked, "Okay, are you acquainted with the IRT SOPs". Ms Watts, any chance we can - at least you can read it with us?---Thank you Mr Mullins.

It will be in that email I sent you earlier on today.

MS WELLS: The transcript?

MR MULLINS: Correct. So we're at page 2194 toward the - here we go - in time - just in time, good timing?---Thank you.

So the question that was asked, "Okay, are you acquainted with the IRT SOPs?" Answer, "I am now." And this is Mr Coleridge. "Okay. Do I take it from you, your answer, that you weren't acquainted with them on 9 November?---No. I knew we had them but no, I can't say that - I can't say I knew them that well." Question, "I think that you were asked whether you were acquainted with them and you said, 'I was aware of them?---Yeah, if I said that, yeah.'" "You were aware that they existed? ---Yeah, sure." And then her Honour asked, " So they weren't taught as part of the two week training?---No, not that I can recall, your Honour." "All right, that was the only - and I'm using the quotation marks - formal document - that we regulated the deployment of the IRT, would you agree?---Yes." Question, "Okay, and it's not something that members of the IRT were taught?---No, I don't think so." "And it's not

something that you, a member of the IRT, whose responsibility it was to be a point of contact on 9 November, knew very much about?---Yep, yeah, I'll agree with that, yeah." Now, that is an entirely unsatisfactory situation isn't it, that the person who was in charge of the deployment on that date hadn't read the Standard Operating Procedures?---Yes.

It's an entirely unsatisfactory situation that people who are trained in the IRT weren't trained in respect of the Standard Operating Procedures?---I'd agree with that, yes.

If you can just scroll through please, to the next page and if I can just see the bottom of that page? Now, what role did - is it Superintendent Wurst?---Superintendent Wurst - Acting Assistant Commissioner Wurst.

(Inaudible) in the deployment of the IRT on this occasion?---Sorry, you're asking me this one?

Yes, I'm asking you?---From the evidence I've heard he was filling the role of Commander Southern to deploy the general support deployment of the IRT.

Right, and so he contributed - - - ?---Although he was an assistant – Acting Assistant Commissioner.

He contributed to the decision making process?---Yes.

Now what I see there in the – about four paragraphs from the bottom, “Were you involved at all in the Standard Operating Procedures for the IRT?---No.” “Had you seen them at any time, prior to 9 November?---No I hadn't.” So we have a very senior member of the police service also, who was engaged in the decision making process, who hadn't seen the Standard Operating Procedures?---Yes.

Do you accept that evidence from - - - ?---Yes, yeah.

That's entirely unsatisfactory as well, isn't it, again?---Yeah I accept the fact that we've closed that gap. He should have had advice provided to him by someone who had details of the Standard Operating Procedures, and with the creation of the Territory Duty Superintendent, who has access to those, for example, I frequently get phone calls quoting a myriad of sections of general orders I don't have right in front of me at that moment at home, or wherever I might be, and I take advice from the person who's reading the general order to me. What does it say. What specifics. What's my role? You know, so again, he may have sought further clarity about what the SOP's say.

We applaud your efforts, ensuring that the SOP's are up-to-date, and cover everything that's required. But how is it that you ensure that on the ground, people are following the SOP's and reading them, and applying them?---Through a myriad of different ways. This inquest is just one of many examples where we go back and review the conduct performance of issues as they arise. They could be a complaint.

They could be an internal identification through a station inspection. A myriad of ways which deficiencies will be brought to the attention of more senior police.

As part of the planning process, you make reference to the need for a risk assessment in this case. And obviously that was not required to be done by the Standard Operating Procedures?---No.

And it wasn't done in this instance?---No.

What is the shape – I withdraw that. You mention that you think that it was the responsibility of the Forward Commander, Sergeant Frost, to do the risk assessment?---I think it would have been beneficial, yes.

And you're obviously familiar, through your many years of experience, with the Western Australian Police and the Northern Territory Police, with risk assessments? ---Yes.

At the very basic level, they have four components. One, identification of the hazard, that's right?---Yes.

Two, assess the level of risk, in the context ordinarily of a matrix of - - - ?---Yes.

- - - consequences. Three, identify the control measures that might be adopted to control the risk?---Yes.

And then fourth, to monitor and review those control measures, and the outcomes? ---Yes.

Now, is your expectation that the risk assessment in this instance, would follow that sort of a simple model, or would – would it follow the – is it SMEAC?---SMEAC.

SMEAC?---SMEAC relates to a – an order, and operational order, which gives details by forcing consideration to various headings, to ensure that when you're delivering your briefing about actions to take place, it addresses, in far greater detail, things that perhaps you might miss if you're just doing a – an off the cuff tactical. I think we saw some evidence of it by that briefing, you know, where maps – you know, and from time to time, police officers have to make on the spot risk assessments. It's very common that we don't formalise it in the written document frequently. It's usually done in that dynamic operating environment. Often as you're – often as you're in a vehicle, heading to the scene, so - - -

Well we've heard some evidence in the inquest already, about a risk assessment being undertaken, and a plan being developed, around the bonnet of a car, as people - - - ?---Yes.

- - - are about to head out for an arrest?---Yes.

And equally, at the other end of the scale, without going to it, document MS19, in your affidavit, in the first affidavit, references the TRG risk assessment that was done, retrospectively?---Yes.

Which is a very detailed analysis?---Yes.

You had no expectation that Sergeant Frost would undertake that exercise?---No, not at that – no, it wouldn't – no it would not generally form part of that briefing, and no I don't expect that level of risk assessment.

Just so we can understand, what sort of shape do you expect it to have taken? You expect it to have some formal shape, in the sense of being written down?---Correct. And I see elements of it within the written plan that exists. So it identifies some of the risk. I would expect that, and as the briefings take place, as people deploy into that execution phase, to go and execute whatever the task would be, that as a group, we would discuss likely – likely issues that we're going to confront. Where you going to be, what equipment we're going to carry, who's going to be first, who's going to be second, which door we're going to go in, who's going to cover what point. They are very common operational decisions that are made in the field, daily, without a written risk assessment.

Would the absence of the health service, on that day, be an important factor to be taken into account, in the risk assessment?---I think in a formalised risk assessment – had have been written down, they would have identified that risk. I think, in the operational context they were operating at the time, I don't believe they did identify that as a significant risk to them.

Because the safety, of not just the police officers, but also the potential arrestee, was a significant factor?---Again, I'll come back to my understanding. It was a general duties arrest process. We do that frequently, right across – in places, sometimes there is no medical. And we don't formalise it in a written plan, you know, police officers have the basic levels of training around first aid response. I think they're adequate for most instances, where we affect the arrest of an individual.

You mention also in your statement, at about the same place, that there's sometimes a role for a negotiator in these types of addresses?---Yes.

Sorry, addresses, arrests?---Yes.

And Constable Alefaio was identified in the action plan drafted by Sergeant Frost, as being a person who would attend the arrest at 5 am on the – on the day following? ---Yes.

Did you see that as being a type of negotiator role?---It's not formalised in the plan, and I – I can't give detail about the briefing, because I'm not – there's no clarity on it. But in my experience, that's what I would have done. I would – if I've attended a remote location where I'm not familiar with people, I would rely very heavily upon the

local police to provide me with information I need to make decisions about what I'm going to do. So it is very common.

Can I just ask you this question, which is completely off the topic that we've been discussing, but I was asked about it on the lawn at lunch time?---Yeah.

The – Constable Rolfe applied for entry into the Queensland Police Service, and was knocked back?---Yep.

And then subsequently applied to the Northern Territory Police Service, and was successful, without disclosing that Queensland Police Service knock back?---Yes.

Have those lines of communication between – you might have given evidence, I'm sorry if you have, but I'm just now trying to check, have those lines of communication now been sorted, between the various police organisations?---Much better than they were, absolutely. I think I did touch upon some of the systems just don't join up, right across the nation, if they haven't disclosed, for example, about other things, other than their application to join another police force. That's - - -

So can that happen again?---I'd like to say it can't happen again, but never say never, your Honour. I think that – we've restricted that as far as humanly possible.

Now you've identified yesterday, several matters, and today, that you as Deputy Commissioner, see as being fundamental flaws in the IRT's discharge of a task that were allocated to them on the day. You recollect that?---I'm sure you're going to direct me to it, Mr Mullins.

I'm just going to run you through a few of those briefly. I don't want to go to them in any great detail, but I want to talk to you about them. The first is a failure to follow the action plan prepared by Sergeant Frost. And to conduct the arrest at five o'clock on the following morning. That's right?---Yes.

And it was – it was also a flaw in that if they walked out the door, and intended not to follow that plan, then they should have gone back to Sergeant Frost, and consulted with her, before moving away from the plan that she had already developed?---Yes, unless – unless, as the evidence led, where they ran across him. I think there was some evidence from (inaudible) if you see him in the street, arrest him. In which case that would have been in accordance with the direction, yes.

You also said that walking out of the police station – or you were asked this question, walking out of the police station to arrest Kumanjayi Walker without clarity as to who was taking the lead, and how they were going to go about the arrest, was a failure? ---Yes.

The failure to follow the ten Operational Safety Principles and ICENCIRE principles, in the execution of a plan - - - ?---Yes.

- - - particularly by Constables Eberl and Rolfe?---Yes.

Moving immediately to the execution phase of the arrest at a time of day, in circumstances where they knew, from the experience only three days prior, that that may well be problematic?---Yes.

Failing to employ tactics to ensure distance was maintained, in the course of the arrest between the target and the officers?---Yes.

Conducting the arrest without the assistance of Constable Alefaio or Williams as a sort of quasi negotiator in order to ensure that a person with local knowledge was present?---In contravention of the plan.

And failing to follow the protocol by dragging Kumanjayi Walker's body across the ground in order to place him the police vehicle?---Yes.

Can I suggest this, at the core of these failures is a fundamental lack of respect? And let me add this, it's a lack of respect for the line of authority and senior commander in Sergeant Frost. Do you accept that?---I accept there's clearly been a breakdown somewhere in terms of what they delivered. I would have that's explored with greater clarity so I can have some visibility and know exactly why. But I can't conclude why they didn't comply with the direction of Sergeant Frost.

How important is it that there be respect for the line of authority for effective policing?---Well, it's very, very important and we don't put badges and ranks on our uniforms, we do it for a reason. To ensure that visibility, chain of command, people know who's in command. Ultimately, you know, it's the basic tenement of policing.

The second aspect that I suggested you was lack of respect of the community. Do you accept that?---That's difficult for me to answer. I think - - -

Can I frame it another way?---Please.

So many of the actions that were undertaken on that date reflected a lack of respect for the community. Where it was or it wasn't it reflected that?---I suspect that was the outcome. I don't know if that was the intent. I think they may have had a lack of understanding but I accept the fact that the community saw it as a lack of respect, yes.

Now, you were asked some questions by Mr Boe and Mr Freckelton about the circumstances in which the family were refused two things. Firstly, information about the state of Kumanjayi Walker's health during his presence in the police station. And then, secondly, the failure by the police officers in the station to allow any family in to be with him in his last moments or thereafter. And I understand that you have reviewed your evidence from yesterday where you said that you thought it was a matter of dignity and I think on reflection that's your own perception. That in fact you accept now that there was no evidence from anybody that that was anybody else's perception?---I accept that other than the fact as a police officer of 40 years standing and working and breathing and living with police officers it is at the heart. That would

have always been the consideration at a death scene, always. It may not be in a house. It may be in the street. It may be in a public place. We would always usually be looking at steps to maintain some dignity of a deceased person. But I accept that there are many other factors that I didn't talk about.

Do you accept that even if that was a matter of concern it was a matter of balancing, on the one hand, the cultural significance of those matters to the family and the people outside the police station and that issue of dignity?---And other things now as I reflect upon, yes.

And you accept just as a primary proposition that one of the other options was bringing in Derek Williams and Warren Williams back into the police station to have a conversation with them about the status of play?---Again, my reflection of the evidence that's been led as I understand it there were text messages going between Sergeant Frost and others. With Derek, now, while he wasn't formally notified of the death I think that formed the belief of the members inside the police station which led to their decision making. They could have asked him to come inside. I don't know that they didn't but I think what impact it would have had on the decision making flowing downstream from that I'm not sure.

I just want to take you to a few aspects of the evidence – and if I could have the document brought up again back. A few aspects of the evidence in respect of why people did what they did and how they perceived things unfolding. If we start with Senior Constable Hand and it's at page 8 of the PDF which is page 695 of the transcript. And he says toward the bottom of that page, "One of the risks" – do you see where I'm at. One of the risks that you identify appears at page 34 of that interview and you say this – are you with me, Deputy Commissioner?---Yeah I can read it.

"There was a real possibility the police station could be stormed. There's only glass doors out the front. There's open access from the front to the front doors. There's also windows on that front side, on that front side of that police station. So, where the sergeant's office is there's a window there. All it would have taken is like a bit rock to get thrown through a window or a car to get driven through the doors if they were that angry." And then, "All it takes is one person to go through and then the whole mob will go through." And he says, "Yes. I'm not saying that." And I asked the question, "Ever had a car driven through a police station front window in your career?---No but I've seen cars on communities go through, drive through fenced yards and houses and onto footballs fields where people are playing football." And then through to the next page, sorry, two pages on we can see the evidence of Sergeant Frost. You can see in that passage there she talks about the first interview that she had with Detective Wells, "It's usually they're armed. A lot of it is women. With women it tends to be – I haven't had too many men." Etcetera, etcetera, and then the paragraph, "Generally with them they're not directing their aggressions towards us. It's towards each other but it really doesn't take very much to set off so I knew when it was a clear shooting they had a lot of reasons than to direct their anger towards us." In the next paragraph, "Now, was that what you were thinking about when you thought about the potential for danger, your experience of women

fighting?---No. What I was thinking about, so obviously what I was thinking about is what I knew of the community over the last two years. I also know that the community part of their culture is for payback and what was happening at the police station given that we had a young Aboriginal male in our police cells having been shot by police. That's what I was thinking about, that this was going to be very volatile." And two paragraphs down, "And did you understand that that would translate into a situation where a police officer injured a community member that there would be payback to the police officer or police in general?" And she thought it would be police in general. So, certainly Senior Constable Hand and Sergeant Frost believed in almost immediate action was going to be taken by an angry horde. Do you accept that that was the theme or their evidence?---A theme obviously they articulated their anxiety about what might happen.

Yes. If we go through to PDF page 13, 1826 but PDF page 13. 1826. This Constable Eberl. And in the paragraph, "And is the reason you didn't contemplate that because you were scared yourself?---Well, potentially we didn't want to escalate anything and if you bring a thought process, like I wasn't making the decisions. That was Sergeant Frost as to what was going on but probably the concept behind not bringing someone in because if they then become aggressive or angry about what's happening then you're going to have to deal with that situation. And you know it's all about protecting the community as much as possible and not putting anyone at harm's way." Again, Constable Eberl expressing a similar view. Do you accept that?---Yes.

Through to page 18 we've got Constable Hawkings. Did I say PDF page 18? So toward the bottom of the page he's asked -- sorry, on the next page, not -- 1968. "Can you explain why it is that you were perceived you were in danger?" And explains there, "Obviously the situation was quite intense. Obviously personal experience when situation arise in communities, crowds gather very, very quickly, and can be quite risk -- risky for members in those situations, where if you were affecting an arrest, people start getting very excited, very quickly." Through the next page, "I've been in situations where I've been arrested people in community and in a very, very short space of time, it's been a very passive arrest might I add, people just come from everywhere, and start becoming aggressive towards you. So it's a case of not letting them get to you, but keeping them at bay." Etcetera, and then "When you say becoming aggressive to you, what -- what do they do?---Very angry, want to come forward, but being held back by some other means at times", and so on. So that's just a sample of some of the comments of the participants?---Yes.

Who were in the police station at the time. And you've heard that evidence, and seen those witnesses give evidence?---Yes.

And do you accept that almost everybody who was in the police station at the time, perceived that because a police officer had been shot and injured -- sorry, because a police officer had shot and injured a community member, that there was a high risk that an angry hoard were going to storm the station, and inflict violence on officers and property?---That was their perception, yes.

In circumstances where no one had experienced that before, in terms of violence against police, in that community?---Can you – can you perhaps rephrase that, to give me some greater clarity so I can provide a simple answer.

Are you aware of any evidence of anybody in the Yuendumu Community, that is the Warlpiri people, storming a police station - - - ?---No.

- - - and attacking a police station in these circumstances?---No.

Or any related circumstances?---There is evidence, as I've been – I think of other localities where there's been significant unrest, and I think there has been some community violence, quite extensive, at Yuendumu previously.

All right. When you say "community violence", that's violence amongst the members of the community?---Community violence.

All right, I'm going to come back to your comment about other communities in a few moments?---Yep.

But as the night wore on, what is clear, and you would agree with this from the evidence, that there was no one who was armed, or who had weapons, was there? ---Well the people had rocks. Which you know, can be a weapon, cause injury. As I understand, there was some earlier advice, evidence provided, that weapons had been taken off some kids by Samara (?) as they had approached the police station. But again, there was no visible police presence out the front, maintaining observations on the crowd that I'm aware of, to form any further view than that. The evidence I've heard.

THE CORONER: ACPO was out the front.

MR MULLINS: Other than Derek Williams?---Derek, and his father, who were providing information to the police, yes.

And Kumanjayi Nelson, the other Elder, I don't know if you recollect that?---No, again, your Honour, I'm just – in my mind, it was on-duty police officers out the front other than Derek, so I apologise.

No one had attempted to breach the station?---No.

No one had smashed any windows?---No.

You agree that the whole front of the police station was glass windows?---Yeah.

Could have been smashed quite easily?---Could have been.

No one attempted to do that?---No.

And Constable Alefaio said he was patrolling the perimeter, and no one attempted to breach the perimeter?---Correct.

And it was – would have been quite easy to breach?---That's what he said, correct.

So as the night wore on, the only signs of any unrest were loud voices?---Yes, and some evidence of a small - - -

Rock - - - ?---Fire, somewhere.

- - - the fire at the health - - - ?---Somewhere else, yes.

And the rocks that were being thrown?---Yes.

Now your evidence is that you accept that after the arrival of the TRG, at about 01.49 hours, that the family should have been told?---Once they had considered those safety options for themselves, and the police and their apprehension, yes – yes they could have.

You accept that Eddy Robertson called the police station to ask for an update at about 1100 hours?---I'll accept that, yes.

And that – is it Trevor Zhang - - - ?---Terry Zhang.

- - - Terry Zhang, contacted him at about 12.07 am, and told him that Kumanjayi was receiving medical treatment?---Yes.

Which of course we know was false?---Yes.

And he apologised for that, that's - - - ?---I heard that, yes.

And he also said that he wasn't just giving information to Mr Robertson, he was giving information to the community. He knew he was using that as a channel, or a conduit, for information to go out to the community?---Yes.

That's right?---Yes I believe – yep.

All right. You agree, as I understand it, your position is that that was an appropriate step at the time?---I think it's an understandable position. I don't know if I support it whole heartedly, other than the fact that their fear and apprehension led them to the plan that they would wait until sufficient resources had arrived, so they could secure the police station in such a manner they was appropriate. I support that decision making.

The community, you understand, during the course of the evening, were seeking information about the welfare of Kumanjayi, and that information was held because of its perception that this angry hoard would storm the police station?---That was their belief, yes.

What hard data, or investigations, or evidence, do you have, or are you aware of, that there was the potential for Warlpiri people to storm the police station, other than what you've told us previously?---Off – here, sitting here now, I can't direct you to a singular piece of evidence that I want to draw your attention to. But I reflect upon the piece that was given by experienced police officers, at the time, confronted with an environment where they – they were apprehensive. So I don't know that, in my mind, that their fears were unfounded. They – you know, these are people that are not someone that's just walked in off the street. They're seasoned police officers. I would expect that they have a level of apprehension that's appropriate. If it's unfounded, well, that's a good thing. But I don't think the actions that they took were to spite the community. It was more around the safety and security that they thought was appropriate at the time.

Why is it that you lump all the communities in together?---In what sense?

Well you said earlier, in answer to one of my questions, that you knew of experience in other communities where this had happened. Why do you lump them all in together?---I'm trying to draw upon 300 pages of evidence before me, that I've made reference to somewhere, so I'm trying to reflect on the run, what was written in that affidavit. And I have a mental blank, and I can't go back to it without drawing my attention to it. So again, I apologise if that's the belief you form, but.

Two people – I'm sorry, this community were being dealt with on that evening?
---Yes.

And they were making requests for information, that's right?---Correct.

And for updates on the situation?---Yes.

And you had two members – or you're aware, that there were two members of the community, Derek and Warren Williams, who had actually been in the police station earlier that evening?---Yes.

That's right? And all the evidence is, that they were calm, and composed, and not angry, that's right?---To the point, there is evidence, within the brief, as I understand it, your Honour, where Derek has communicated, I think to Assistant Commissioner Wurst, that they would likely be unrest if they were aware that something had already passed. Now again, I can't draw your reference to this particular moment where I formed that belief from my recollection, but that's my understanding. And that would have an influence and bearing upon the decision making that they're likely to make, based upon the person that's standing out the front, who – who they rely upon to give them advice, so - - -

Do you agree with the decision making, from your perspective, as Deputy Commissioner, that Derek should not have been told of the passing of Kumanjaji?
---I think, again, you're asking me to make a decision that I can't undo, that requires the wisdom of hindsight and 44 years policing experience, that wasn't existent at the

time out there, and I find that difficult, I think, that their decision making was not done to despite the community of Yuendumu. It was around their concern around safety. It was their concern about the safety of the police station, the procedural things they're going to do. I – I think – and I haven't spoken to Derek about that personally yet myself, perhaps they could have told him. Perhaps that might have changed things. But they didn't. And I don't know that it would have made any material difference ultimately, what transpired further. I'm not – I can't speculate. I don't know.

THE CORONER: Every other police member, on the ground, at Yuendumu that night, knew about the passing. Why is Derek singled out and treated differently?---If I could offer anything, and I can't give you a hard and fast definitive answer based upon evidence that I've read before me that I know, other than perhaps their concern about telling him; his reaction. I mean, it's his close family member. I don't know. I can't offer something that I can't tangibly provide a response to.

MR MULLINS: Can I suggest to you that at the very heart of this entire matter of the provision of information is that Derek was treated on the evening in question, despite having been a police officer, despite having shown complete respect for the police service and loyalty, he was treated as part of the angry hoard?---I don't know if I agree with that at all, not from the evidence I heard from all of the police officers that work with him, they hold him in high regard and I don't agree with that at all, no.

THE CORONER: He was treated that way so far as the provision of information? ---Certainly. That's how he was treated because, from what we can see, the police believed that if they told him, he'd circulate the information.

MR MULLINS: Yes, but you said he was part of the angry hoard, I don't think for one minute they believed that of Derek Williams. I don't believe that at all. But he was being treated the same way, wasn't he?---No, I don't think he was. They weren't communicating with other members of the - - -

THE CORONER: In the sense of communication. In the sense of that piece of information, every other police person on the ground had that piece of information and it was not communicated to Derek, and it wasn't communicated to anyone else in the community. It wasn't communicated to other people in the community because of fears of a reaction from those members of the community?---Again, your Honour, I can't provide clarity on what they thought Derek would do, because from everything I heard, my impression was that he was highly – and he is still regarded in high regard as a highly valued member of the police force.

MR MULLINS: And the fear her Honour is referring to emerged, I think as you have conceded, not from a consideration of the circumstances and the individuals that were outside the police station, but from the perception – and this was one of a number of communities across the Northern Territory where things might explode, so these people should be treated that way?---The difficulty we face as police is, unfortunate as it is, from time to time, we have high levels of community unrest where police officers either meet in the middle to try and resolve complex social

issues at short notice in the middle of the night, middle of the day with limited resources, and I think perhaps there is a degree that the sense of those sorts of widely-known issues are a reality for policing. So, it does lead to then our apprehension as police officers in a remote location about safety, about how we're going to manage this, what could occur and we have seen instances of community violence and unrest, which has led to damage, houses being burnt, a whole raft of difficult social problems and the police have to deal with that. We deal with it - - -

THE CORONER: Do you have a different level of trust in relation to information for constables as compared to ACPOs and ALOs?---There's no formalised, your Honour, where we would do that, no. We wouldn't do that as a normal formalised process. If you're an ACPO, you have the same – whilst they have different responsibilities, they're still a sworn member of the police and they have an acceptance they are entitled to share our information and be part of our decision-making as anyone else. If this is an individual instance, it was, I suspect, driven at an individual level.

THE CORONER: I'm only asking the questions as a means of reflection.

DR FRECKELTON: Your Honour, we've located the passage to which the witness refers. So, all I know is that it's the statement of Assistant Commissioner Wurst of 2 August 2020 where at par 47, he said this: "At 8:48 pm, I received a call from Williams, who was standing right in front of the police station with the other community members. He told me something, that family of the person who had been shot were upset and very angry, that the community might try and hurt the police in the station and that he did not know at this time whether the person who had been shot was still alive. I took his call outside the operation room in a side room."?---Thank you, your Honour.

MR MULLINS: Thank you, Detective Commission Smalpage.

THE CORONER: Yes, Mr Murphy.

MR MURPHY: Your Honour, just for my benefit, what time would your Honour like to break?

THE CORONER: We break at 4:30 usually. We've got our afternoon break. We might break now.

DR FRECKELTON: (inaudible), your Honour.

THE CORONER: Yes, we'll have a short afternoon break adjournment.

WITNESS WITHDREW

ADJOURNED

RESUMED

MURRAY SMALPAGE:

THE CORONER: Mr Murphy?

XN BY MR MURPHY:

MR MURPHY: Deputy Commissioner, my name is Murphy, being led by Mr Espie from NAAJA, and my questioning today is really almost entirely a big picture. I know you've been asked a lot of questions about the night in question and the events before and after it. Most of my questions won't go to that at all. I just wanted to start with some of the statements in your first affidavit about some of the priorities of the Northern Territory Police Force, particularly subsequent to the death of Kumanjaya Walker, they also, as I understand it just generally and as reflected in the ten-year plan. The Northern Territory Police Force is committed to involving and empowering local communities, is that right?---Yes.

Consulting with local community and stakeholders?---Yes.

Encouraging understanding and considering community views?---Yes.

Valuing local expertise?---Yes.

And part of that or as a result of that and to give effect to those priorities, the birth of the community resilience and engagement from there, is that right?
---that's correct.

And part of that is to foster a culture of shared decision-making?---Yes.

Another expression of these sort of priorities within the police force is the mutual respect agreements, is that right?---Correct.

And also giving effect to - and this is actually primarily through community resilience and engagement (inaudible) the Northern Territory Local Government (inaudible) - Northern Territory Government's local decision-making framework, is that right?
---Yes.

And I don't think this comes out of your statement, but I think it's a matter of logic. Is the reason or one of the reasons that the Northern Territory Police Force is committed to empowering local community, valuing their knowledge and including them in decision-making, is that it leads to more effective policing and safer communities?---I believe so, yes.

And in fact, it would seem to be that that kind of idea is one of the very rationales for actual community police officers in their position?---Yes.

And I guess on a more granular level, those are years of engaging with the community in operational decision-making to make things work more effectively and more safely, is informing the practice of negotiated arrests that we've heard some evidence about?---Insofar as practicable, yes.

And it's another of those values and ideas that I've talked about or another rationale for trying as far as possible to liaise with elders, especially on police officer introduction to the community but also generally about significant events in the community, sorry business and the like?---Yes.

That same rationale is - does that also inform the police's view about the value of - if I can call them - complementary groups and institutions like Night Patrol?---Yes.

And law and justice groups like the Kurdiji that we heard from on Monday?---Where practicable, yes I think - yes.

So just in summary then, value in local (inaudible), prioritising local decision-making, empowering local communities, fostering mutual respect - these are things that the Northern Territory Police Force values and is committed to?---Correct.

And these involved listening to local communities and what is important and listen to them about what is important to them?---Yes.

And it's not just listening. I know you've opened your answers to Dr Freckelton's questions with saying that listening is a big part of respect, but it's not just listening, it's taking the things that you hear on board, seeing if you can accommodate them as best as you can, is that right?---I'd agree with that, yes.

And insofar as involved listening, it's not just listening to the stuff you want to hear, it's listening to the hard stuff, is that right?---As relates to our function and role in that community, yes.

But it also involves listening to things that might be difficult for the organisation to hear and thinking about whether those things can be accommodated - just thinking about it - considering it?---And - yes, and it happens frequently.

Do you agree that one thing that some communities and particularly Yuendumu and some Elders of Yuendumu have said is important to them, is that police do not carry firearms as a matter of course in the community?---Yes.

So you agree that that appears to be a subject of real importance to at least some Aboriginal people n Yuendumu and, in fact, some elders of that community?---I think the Northern Territory Police Force, we acknowledge, as we've discussed, the aims of listening, the ideology, the intent that we've got behind it.

So the question was, do you agree that police, not carrying guns around the community as a matter of course, is something that is important to at least with

consent of the Yuendumu community?---I accept the Yuendumu community have expressed that view, yes.

But that is not something that the police are willing to empower the local community about. Is that right?---Well, I'm not quite sure. If you're asking me if we've go unarmed, as a principle, no we won't be. The Northern Territory Police Force have an operational need to be ready to serve at any moment. It may not be n Yuendumu, it might not be in the district of Yuendumu - it might be outside of the community. There's a whole raft of reasons why we would still wear firearms.

It's off the table, is that fair to say?---I think that insofar as our operational footprint, we will be wearing firearms, yes.

That is an imperative and unqualified statements. "We will be wearing firearms"? If any negotiation on that is off the table, is that right?---I won't go down until I know those who are on the ground level and that have those conversations with the community, general operational front line police officers will carry firearms. You've heard evidence, your Honour, that we have a whole raft of other greater involvement with ALOS. They don't wear firearms.

And I am sure you will have the opportunity to address that in re-examination in terms of (inaudible). But that that topic is off the table for negotiation and you've expressed that in your first affidavit, that this is something that the police are not willing to budge on. Am I correct in my understanding of the brief that that position - that notwithstanding hearing the community's views on this issue, that uncompromising position of the police has been reached without any systematic cost benefit analysis without any exploration of the circumstances in which it might be practicable or not for police to limit the carrying of firearms in Yuendumu?---I don't follow your line of reasoning but the Northern Territory Police officers will be armed by necessity as we go about our operational duties.

And the Northern Territory Police Force, after hearing the views of the Yuendumu community, have not conducted any internal review or consideration of the possibility of not carrying firearms?---I'm comfortable that as the local police officers at Yuendumu go about their lawful duties they are engaged with the community on a day to day basis but for our front line operational duties we will be armed.

And do you think that process of hearing - or becoming aware of a strongly held community view about how policing operates in the community and police then taking an uncompromising position without any systematic consideration. Do you think that is consistent with empowering local communities and valuing local expertise?---I don't think they're mutually exclusive on one topic. I think there's a raft of things that the Northern Territory Police can actively engage with in a community on a day to day basis but a raft of other issues, but it also centres around officer safety. There's a whole raft of things, as I've discussed, why that is not capable of being achieved.

But you do support the Northern Territory Government's local decision-making policy. Is that right?---Yes, I do, in principle.

If I could just ask that that be brought up, that's the first PDF document. So this is the - this isn't something I've come up with, this is in your statement, the Northern Territory Government's local decision-making policy?

---Yes.

This is page 5. It's the first page of text in a document called, "The local decision-making policy framework". On the left hand side - and perhaps that could be zoomed in, that little bit, that's it, thank you. On the left hand side I am going to read out a statement and ask if you agree with it and it's a quote, it's from the Chief Minister.

"The degradation and humiliation of intervention convinced me ten years ago meaningful progress, engagement, reconciliation and protection of culture lay in not taking power but returning power."

Do you agree with that?---As a statement, yes.

I will read a further statement, it's still on - it's on the right-hand side now, of the page;

"Instead of government telling communities how it will be, communities will tell government. This could be how to best nurture the kids who have slipped through the gaps because we know they will (inaudible)."

Do you agree with that proposition?---Can you just read it again - sorry? What's wrong with - - -

It's the first paragraph on the right-hand side of the page, is the government not telling community but communities telling government. Do you agree with that first paragraph?---Yes, it happens frequently.

Do you agree with the next paragraph;

"Returning decision-making is not only decent, it's smart. As history shows, when a wrong decision is made in Darwin it's hard to fix and when a wrong decision is made in Canberra it's even harder to fix. Local decisions are the best decisions."

Do you agree with that proposition?---In generic principle, yes.

Do you agree that it would be more consistent with those statements for police to actively engage with communities and give meaningful and serious and consideration and extended consideration to whether or not there are ways in which they can minimise the carrying of firearms in the community?---I think I've heard evidence, your Honour, through this inquest from Sergeant Jolly, well respected

police sergeant at Yuendumu, in particular. Derek Williams, others. That carrying of firearms in Yuendumu by police officers is not recent, it's not new, it's not unique. And I think it's one small element of broader context of what this statement is talking about, around decision making. And the Northern Territory Police, I think, are very happy to work collaboratively around lots of issues. But there's certainly going to be some non-negotiables and it's not just in terms of, for example, carrying a firearm. There might be legislative issues. There's a whole raft of things that are - - -

I don't – without necessarily agreeing to the proposition it has to be non-negotiable, isn't the problem that the police have called it a non-negotiable without first engaging in a meaningful dialogue with the community to work out what they want and what their values are?---Well – but I – what I actually think that localised decision making at the very lowest level is alive and well and they don't necessarily relay information to me as the Deputy Commissioner and other senior. If a local – and I think we heard some evidence this week, Lajamanu, I think on their way to work or something, they attended in uniform and they weren't wearing firearms. There may be times when it is appropriate. But for general operational policing duties we do it for safety reasons. We don't do it to confront the community. We do it to protect the community and to protect our officers

Are you saying on issues of the protection of community, that that's something where you don't engage with the community?---We engage with communities all the time.

Your Honour, I will ultimately – NAAJA will seek to put that document into evidence but I'm content to either tender it now or provide it at a subsequent date.

THE CORONER: Sure.

DR DWYER: We can make it available overnight and then tender it in the morning.

THE CORONER: Sure.

MR MURPHY: Deputy Commissioner, I'd like to move to another topic, that is as I understand it, has been marked as non-negotiable and off the table by police, notwithstanding the views that have been expressed by the Yuendumu Community. And that's what I've think you referred to in your statement as screening, community screening of police officers. But I might use a more neutral term of community input or endorsement of police officers in remote communities. Do you agree that the Northern Territory Police's position is that this is a non-negotiable, that the community cannot be involved in endorsing – dis-endorsing police officers who are stationed there?---I think to clarify the evidence I've already given, your Honour and to provide some clarity, it's just impracticable, not so much as not negotiable. I don't think it's capable of being delivered in the current structures and framework.

You've said it's impracticable. Has there been consideration given to a process by which views could be heard ahead of police coming to community, at least police who are coming for a long period of time, in a sense of reaching some sort of compromise, that it might not be screening but there might be some input from

community?---Again, your Honour, and I can't clarify it without recollection to the evidence of Sergeant Jolly. But it's my understanding that there are strong connections at local community level that I'm not aware of any pushback by Yuendumu Community of an individual police officer or member – because that would usually be relayed back through the command and it would be heard. It would be heard. I don't know what action could be taken, but it would be heard. Why would we leave a police officer in a community as a community-based police officer if the community don't want you there. I mean there's plenty of examples, even in this instance, I think, your Honour, where Sergeant Frost left the community based upon
- - -

Just thinking prospectively, as in before police officers come, the Northern Territory Police Force position is it's not practicable to take onboard community input into who those police might be and their characteristics, whether it's ex-service status or otherwise. That's right, it's not practicable?---It's not. It's impracticable. Short terms, we need people there tonight, tomorrow. Availability of limited resource pool.

THE CORONER: (inaudible) Mr Murphy was talking about longer term placements, not the short-term ones?---Again, your Honour, if I reflect upon how it transposes again. They usually become the best training grounds for those that go back out to those communities. At some point you have to expose junior members to remove community and where they go, are we going to exclude every ADF member across the board. Where, how. It becomes complex.

MR MURPHY: It's complex and I can see you're grappling with it. But isn't the point that this is something important to the community. It shouldn't be you grappling within cross-examination, it should be the subject of considered examination by the force as a whole?---Well I think it has been and that's why we can't – we're not delivering it now. I think it's impracticable. As we said, we've got a stringent industrial footprint, we've got limited resources. We can't deliver it at the moment.

Is there documentation – and you can take this on notice – of the consideration of this issue beyond a few paragraphs in your statement where you deal with it?---We manage – it's probably not articulated within my statement. We operate as a police officer deployment unit through the Northern Territory Police people branch. That area manages applications and transfers right across the Northern Territory for people to placement into permanent roles when they apply for positions. We generally don't screen individual transfers based upon their prior experience within the ADF, for example, because of the numbers of vacancies that we manage across the Northern Territory. So it's not routinely done. No.

Deputy Commissioner, the question was not whether you generally screen. The question was whether there's document – you said this has been given consideration and the question was – and you can take it on notice – is there documentation beyond the limited paragraphs in your statements for the Northern Territory Police Force giving serious consideration to, at least the Yuendumu Community's desire to have an input in who comes to their police station and carries lethal weapons around their community?---Well I think, your Honour, I'm here as the Deputy Police

Commissioner. I've considered it. Other members of the senior executive have considered it. It becomes impracticable in an operational sense in our operating environment to deliver that outcome. I don't say it's non-negotiable, I think it's just unachievable and I think there's a differentiation you need to make between both. In a perfect world I would be able to deliver everything everyone wanted. But I don't live there, unfortunately.

When I said the phrase this is a non-negotiable, there is, if I can say perhaps one qualification, the Northern Territory Police is not completely opposed in principle to community members having a say in who assists their community in policing, because you agree that ALOs must be endorsed by Elders or traditional owners, is that right?---Correct.

So that is a context in which the Northern Territory Police Force are prepared to have Elders screening who works in their community, is that right?---Community based police, yes, ALOs.

So to put it simply, Aboriginal Elders can screen ALOs but Aboriginal Elders cannot screen police members coming to remote communities, that's right?---I think screening is the word that's used there but I think it's endorsement. We would perhaps be uncomfortable picking somebody in an ALO role, which is a really strong liaison role, if they didn't receive strong endorsement from the community at which they lived permanently and are going to serve.

And part of that is because ALOs have to have standing and trust in the community. Those are the words you've used in your statement?---Which is what we're aiming to achieve, yes.

But you'd agree you'd hope that non-ALOs, that is just police members, would have standing or trust in the community, if not at the start, certainly that they develop that, is that right?---Hopefully they develop trust and respect within that community, yes.

Do you agree that it actually might facilitate that if Elders did have some input into who came to police in the community?---I accept that in a formal sense that we don't recognise that prior to deployment. But as I've indicated to you, I am aware – well I'm not aware of anywhere we've left a police member where the community absolutely doesn't want them to be there and it usually gets communicated quite effectively through our chain of command and process and we would take steps to deal with it. I accept that the fact that they may be, after they've already arrived, but again, with the operational footprint we have and the resource limitations, 27 or 26 percent of the police force is ex-ADF.

I appreciate that you moved to rather than prospective screening, issues that happen after a person comes to the police station. But you understand my focus is on this prospect of screening or prospect of input. And so I need to ask you, either as a matter of reality or perception do you see anything problematic in the fact that the Northern Territory Police Force's position is that Aboriginal Elders can screen ALOs, that is predominantly exclusively Aboriginal people. But Aboriginal Elders cannot

screen predominantly non-Aboriginal members of the police force who come into their community?---I think there's a fundamental difference in those that their screening to employ within the community. They live there, that's their community. That's the whole purpose. So we're hoping to endorse greater cultural awareness and sensitivity so they can bring those across to those members that are already there. But I've expressed the impracticalities of the resource deployment of the Northern Territory Police Force on it?

You agree that non-ALOs - police, they end up living in the community as well, though?---That's usually where they're recruited from, that community, yes.

Sorry, non-ALOs?---Non ALOs?

Yes? As in police officers?---Police officers, yes.

Will also end up living in the community - - -?---Yes.

- - - that is asking to have (inaudible)?---Yes. But in the nuances, there's some industrial entitlement difference between the employment of an ALO, an ACPO, and a police officer in terms of what – housing is an entitlement, for example, that doesn't necessarily extend to an ALO. So there's differences in terms of where we allocate, who gets what house, those types of things. An ALO that's employed from the community hopefully is well ensconced in that community and has their own housing.

Do you agree – and again just thinking prospectively – this is before a police officer comes to community – that the result of the Northern Territory Police Force's position is that you're denying Aboriginal people a say in who comes to police them in their communities?---Denying them. Um, to my knowledge there's not a police force in Australia that has the proposition that you're trying to propose there. I'm not saying that we'll oppose it, we'll not be the first to try and trial something new. But again, I come back to the basic (inaudible) I don't think we're denying anybody any – there's plenty of avenues of opportunity where it's not appropriate, where it doesn't work out, the officer's not engaging – there's lots of scope for us to take appropriate steps with a community if it's not working out. And we do it, it happens not infrequently.

The question was prospective and that is when the police come here – I'm not going to ask you to answer it again but I would encourage you to listen to the question. I say that respectfully, I appreciate you've been in the witness box for a long day. But still staying with this moment when police come to the community rather than I understand your focus has been on input as they are staying there. But it's correct that one thing that the Northern Territory police is prepared to explore in relation to police officers coming to the community is this soon to be rolled out program, "Adopt a Cop"?---Yes.

And that involves asking community members to "Spend time with a newly posted police officer, introduce them to other community members, and educate them about local customs, traditions, and sacred sites", (inaudible)?---Yes.

And to impart – asking the community leaders to impart to the police officers, “Valuable cultural insights and understandings”?---Yes.

Do you perceive anything – or do you think there is anything problematic or do you think it could be perceived as problematic by – on the one hand having the position that Aboriginal people in remote communities cannot have a say in who comes to their community to carry legal force (inaudible) a police officer, but once that person comes the NT Police asks Aboriginal people to spend time with that person and impart valuable cultural insights. Do you see anything problematic – or that could be perceived as problematic?---I think it's a great step forward to better community engagement and understanding. I think the – if I haven't clarified or articulated well I'm happy to try and explain it in greater detail. But CREC and the whole ALO program in the future we might have exactly that proposition where you become an ALO in a community and then you become a constable when you go back to the community of which you've grown up and lived in. That's the longevity of the start. I think you can't reach a conclusion without starting somewhere. And I think we're on that journey, your Honour.

I might just again return with a different focus now to high level things that the Northern Territory Police Force values, particularly in its members. Four things. One is cultural competence?---Yes, yes.

Another is the ability to gain the trust and respect of the community that the police officer is in, especially in remote communities?---Yep. Yes.

Another is an ability to de-escalate situations and use the minimum amount of force?---Yes.

And another is – and this is perhaps going to come out of the evidence over the course of this inquest – but the Northern Territory police does value the ability to respond in a trauma informed way, is that right?---Yes.

Do you agree that ACPOs offer special capacities in all of those four criteria: cultural competence; trust and respect of the community; ability to de-escalate; and ability to respond in a trauma informed way? Do you agree with that?---Yes.

And really, the value – and I use that with that – what ACPOs can offer to the Northern Territory Police Force, particularly in respect of those particular criteria, was really identified by Derek Williams' – Derek Williams' work in Yuendumu generally, but particularly on the night Kumanjayi Walker's passed?---Correct. But to clarify, you know, an ACPO is Aboriginal. It may not necessarily come from that same locality for which they're back to policing. So the ALO model in its longevity is more around building that capacity from the very start in that community to get them as police officers, or an ACPO in that very community as opposed to the issues that you've identified there. I think the intent's there, the journey's commenced, we've just not yet matured that piece.

You will not hear any criticism from NAAJA about ALOs? I'm just focusing on ACPOs at the moment?---Okay.

And the proposition is ACPOs, and in particular Derek Williams' illustrative example is someone who has any credible amount of cultural competence?---Yes, I agree.

(Inaudible) amount of trust and respect in the community?---Yes.

And the ability to de-escalate situations and using the minimum amount of force. That's why he was in high demand in use of these negotiated arrests?---Yes.

And also the ability to respond in a trauma informed way. And I'm sure if you were in court for the evidence of Kerry-Anne Shaw, that is the psychologist and trauma and addiction counsellor, who I paraphrase – basically said Derek Williams is the trauma informed response. Do you agree with that?---I missed that evidence, but I'd agree, yes, if we had more Derek Williams' in the Northern Territory Police Force it would be well placed.

So notwithstanding ACPOs special capacities in those four areas that the Northern Territory Police Force values, they're paid less than constables, that's right?---That's correct.

And not just a little bit less? You've detailed in your statement that the difference between a first year qualified ACPO – this is in the third statement (inaudible) 90 – and a first-year qualified constable once you take into account allowances is around \$16,000. Would you agree with that, approximately?---If – if that's what the data shows, yes.

And could I just, while I'm asking the next few questions could I ask for a document to be brought up. It's the Northern Territory Police Force Consent Agreement 2019. I think it's number 2. It might be number 3 actually. The document that was just brought up there was just a webpage that I think is linked to in your statement which detailed the current rate of pay for recruiting ACPOs. But the document I'll take you to now is – if you could just scroll just so that – yes, perhaps so we can see the top row. Perhaps just scroll up a tiny bit. Perfect, thank you. Does this – if I said that this is a page in the Northern Territory Police Force Consent Agreement 2019 that appears to detail the rates of pay of ACPOs and other police officers – yes, I beg your pardon – well, it is a document that details the rate of pay of Aboriginal Community Police Officers up until at least 2021. Does that sound right to you? ---Yeah, I accept that. Yes.

And in fact, the Police Association might ask these questions but no doubt they know it better than me, but the rate that appears to be assigned there to 2021 for ACPOs – if I told you that that was still the rate that was shown on the Northern Territory Police Force website as the rate of pay, would that sound right to you, even though it's just listed there as 2021 and we're now in 2022?---I think we're currently in consent agreement negotiations. It would probably be appropriate, I think.

So the existing – it might be that the existing agreement is in place until a new agreement is reached?---Correct.

Yes, okay. The point – that was just a matter of clarification. My point is the two highlighted rows – faintly highlighted rows – and I hope that you can see them, although it seems your screen is blocking one. But would you agree with the proposition, looking at the far right-hand column, that a senior ACPO with ten years' experience is paid less than a constable with three years' experience? And I will just ask the court staff to scroll down so we can see the far right-hand column.

A PERSON UNKNOWN: (inaudible).

MR MURPHY: Yes. Would you agree that that's an accurate description of the relative pay rates?---I accept that that's the current consent agreement rates. Yes.

And would you agree – sorry, in your statement you say that the pay differential reflects, "The additional training and investigative skill set of a constable"?---Correct, and I'm informed in relation to the ability to conduct investigations into other categories of crimes and crime types, which limits - - -

But if that's what the differential reflects, what is not reflected in the pay differential is the unique competencies of ACPOs, some of which we have just discussed. Would you agree with that?---Yes.

You agree that that's simply not reflected in the pay of ACPOs, relative to particular constables and also auxiliaries?---Again, the pay scales – your Honour, I'm – I can't comment. The – they are what they are. I accept that they're as they're recorded. I – it's my advice is the pay scales reflect the difference between the sworn powers that they've got between the position of ACPO and constable. There's additional core duty responsibilities with the rank of constable. But I have already highlighted the plan and the pathway we're trying to create, is that ACPOs then become constables, ALOs become ACPOs and we transition and we will have an Aboriginal Commissioner of Police.

But the question is, is – perhaps not as optimistic as that, although we should be optimistic and we are optimistic. But this, in fact, is the current state of play. And the question is: does this pay differential value additional training and skill set – for example, that's given in the college – and fail to appropriately take into account unique competencies of ACPOs that we've just spoken about?---Well, that – that's not the advice I have. So I don't agree. My advice is that it reflects the difference between the core duty responsibilities, and that's what the pay differential relates to, not those other core competencies. Because police officers are expected to maintain those core competencies you just identified as well.

I guess the question isn't why these different rates are set, but the question is looking at them objectively, from the outside, after you have acknowledged those unique capacities of ACPOs, doesn't it appear to fail to capture something – to fail to capture the special value of ACPOs?---Again, I go back – my – my advice is the pay

scales don't just speak to those core competencies. There's other core competencies of the office of constable, which differentiates the pay scales. And constables are still expected to have those core competencies as well. Obviously, to a – probably to a lesser reality extent, what we see with someone who has lived there in a community their whole career and life.

Do you agree that, for an outsider looking at this, it might look like that the pay scale devalues knowledge and competencies that are unique to, or at least particularly strongly held by, Aboriginal people?---Well, again, I have tried to articulate as best I can: I don't believe it reflects that at all, no. I don't – me personally? No, I don't. I said my advice is that as I've already outlined, and we value – greatly – those skills and competencies that they bring to the Northern Territory Police Force.

I just want to move to, I guess moving from – and thank you, court staff. That can be taken down now. The issue of – a more concrete issue, if I can call it that, of interpersonal racism or deliberate or overt or conscious racism. And in particular, text messages that the inquest has heard so much about. You would agree that racism is very hard to detect?---Yes.

And you would agree that, given how hard it is to detect, the trove of text messages that revealed what appear to be the perhaps closely-held but racist views, or racist expressions, of some members of the Northern Territory Police Force are of particular concern?---Yes.

And you said yesterday that you “Fervently believed” – those were your words – that racism is not prevalent in the Northern Territory Police Force. That's right?---I don't believe it's endemic, no.

Not endemic?---No.

What about something less than endemic?---Well, your Honour, I've heard the evidence and it's very clear throughout this inquest that there was members of the Northern Territory Police Force exchanging racist and sexist, misogynist views. I'm aware of other incidences where similar things have come to the attention of the Northern Territory Police Force, and we have taken swift action to deal with it. It's not acceptable.

And you said swift action? I think in your evidence yesterday you said, “Firm action.” You've said it's not acceptable today. I think on your evidence yesterday you said it's totally unacceptable. I take it that means you would agree with the thrust of recommendation 60 of the Royal Commission to Aboriginal Person in Custody, and that is that racist – and it not a quote, it's paraphrased – but racism – particularly racist abuse and language – needs to be treated as a serious breach of discipline. You would agree with that?---Yes.

Do you agree – and I know this would primarily be the witness tomorrow's area of focus – but do you agree that, beside from Constable Rolfe, the other current

members of the Northern Territory Police Force that were involved in these racist text messages have received remedial advice only? Is that right?---Yes.

And do you see that as firm action from the Northern Territory Police Force?---I think, you Honour, you will hear greater clarity around that from Assistant Commissioner Porter. But if the regulatory disciplinary framework of the Northern Territory Police Force is (inaudible) and if the core dates of (inaudible) and legislative items aren't met, the barriers to utilising serious breaches of discipline are not available to the Northern Territory Police Force. And remedial advice becomes an option to deal with that matter.

Just saying that those barriers weren't there, would you agree that treating text messages like these with remedial advice doesn't really equate with treating it as a serious breach of discipline. Would you agree with that?---You will receive greater advice tomorrow around that.

THE CORONER: This is asking your opinion?---Yes. Yes, I – I agree. I think – I think we would have taken other action if it was available to us.

MR MURPHY: Your Honour, I note the time. I probably have about 15 minutes.

THE CORONER: We will sit until 4:30. That's not an invitation.

MR MURPHY: No.

I would like to move now from what I was asking about, which I have called interpersonal racism or the, sort of, overtly racist views held by individual members of the police force to a topic that you've been asked about, and that's systemic or institutional racism. You have been asked about various definitions and I'm sorry if I missed you give this answer earlier, but what's your understanding? Leaving aside definitions that have been proffered by other people, you've come to a view that there's no systemic racism in the police force. What's your understanding of systemic racism?---I think, your Honour, I've – I've tried to articulate this and I'm very concerned that I'm going to provide an answer contrary to the one I provided before that would be able to reflect what I said.

THE CORONER: I'm going back to see if I can find it. I wrote definition?---In the broadest possible context, without holding me to words I said three hours ago, I don't see the systems that allow it to flourish, to achieve, I accept that from time to time, we will have deficiencies within our conduct with individuals, but as an agency and as a whole, we are fundamentally the opposite. We don't want racism, systemic racism, in our police force, in our processes, in our policies and it is an ongoing scope of works. And I think I made that really clear, your Honour. You know, there's lots and lots of moving parts that take time for us to pull together because there may be things that you can identify that you could address to us that we've oversight. I don't know. I'm happy to answer anything I can around that to identify those issues there. We should take steps to - - -

I'm going to help you out as well?---Thank you. Thank you, your Honour.

Because it's late in the day. This is what you said last time, "Policies and systems that perpetuate or permit racist practice."?---Thank you, your Honour.

MR MURPHY: Thank you, your Honour.

Deputy Commissioner, if I can – the sentiment about what you've just said about, you know, parts of these systems that you might have missed and it being an ongoing process, I might have missed something, but I didn't discern that in your statement. I thought it was an unequivocal statement, "There's no systemic racism in the police force." What I understand that you say now is, look I didn't see any, but if it is there, we want to work on it. Is that right?---In the broadest context, because it's such a complex – and we could probably talk all day for a week, your Honour, on this one issue around the various systems, the structure of the police. I've read literature around the legislature, the judicial framework; there's a whole raft of things that could be perceived as systemic racism towards Aboriginal people. I don't believe that what the Northern Territory Police Force is, as an organisation by its own, as compared to government and systems and the whole operating model that we operate under is designed to allow racism in the police force. If there are things that are identified from time to time through inquest, through failed prosecution, through legislature deficiencies, through a whole manner of processes that take place, I think we've got to be responsive to be able to deal with it as they come up. And it's such a complex world. I can't – and I don't think the Northern Territory Police Force can articulate every single possible nuance within what is really a complex legislative framework. And as I've tried to highlight before, when you get the clash of a 50,000 year old culture and a legislative framework written by politicians and others, it's really complicated and we are trying to be responsive to provide justice in an even forum, and it's not always that way, unfortunately.

In that process of continuing to think about the systems and to proactively work to identify if it's there, eradicate it, which is – I understand what you're saying. Do you think it's important to acknowledge the history of the institution of the police force and structures that may have existed, given the police force in the past that did enforce, perhaps racist policies?---Absolutely. And you know, again your Honour, this is quite an emotive topic. You know, police over 150 years in Australia and out connection with Aboriginal people has been a disaster. And no one jurisdiction can reflect back upon a proud and long history with engagement with Aboriginal people, if they truly reflect on what's happened. I think every police force, and particularly the Northern Territory Police Force, is more attuned, alert and awake to that than in my 44 year career – I mean the sad reality, when you get an old man like me, is that I see how far we've come, as opposed to perhaps all the deficiencies that we see now. We - as policing has come a monumental way in my career and I think we're on the cusp of being even better. It just – we're not there yet and I think we identify and accept the fact that we're not perfect. We reflect where we can and we'll try and do better to make sure that we deliver the best possible outcomes. But unfortunately, not everybody's happy along the way, your Honour.

I'm getting towards the end of my questions.

If I could just ask the court staff to bring up the Aboriginal Justice Agreement at page 21.

And whilst that's happening, Deputy Commissioner, are the Northern Territory Police Force committed to the Aboriginal Justice Agreement?---Correct.

And you agree 100 percent in your first statement at par 296 that really the primary aim of that is identifying and eliminating system racism from government agencies. That's right?---Yes.

Do you agree that – well, just reading the final paragraph on the right-hand side there, do you agree that – I'll give you a chance to read that, Deputy Commissioner?---I'm reading it now. Yes.

That in the face of concerns, whether it's from the community or including held in government about the possibility of systemic racism in the Northern Territory Police Force. It's not productive to simply deny, minimise or reflect. That wouldn't be a productive response. Would you agree with that?---Is that what you're suggesting I've done?

No, I'm not. And certainly not in your evidence today. But my question is that you would agree that that's not a productive response?---I would agree.

That a productive response is one that, as is said there, embraces openness, honesty and ownership of systemic shortcomings. Would you agree with that? ---Yes, I would.

And in the spirit of that, and acknowledging the complexity of the problem, is the Northern Territory Police Force committed to examining issues that have been raised in this issue in this inquest as having the potential to be expressions of systemic racism. Is the Northern Territory Police Force committed to considering those in the spirit of openness, honesty and ownership of systemic shortcomings?---We are. But I think just the language is really important. Language – so the 1600 and 40-odd members of the Northern Territory Police Force, language is really important. We want them on this journey with us and language would suggest that every one of the – I've heard some outstanding evidence from people who are committed, Aboriginal police officers, Bradley Wallace. I mean, they're part of my organisation that I'm extremely proud of, and if you were to say that would reflect upon every single person who wears this uniform, and I don't believe that to be reflective of who we are as an organisation. From time to time, you will find, as in any organisation, elements of it that don't conform, don't align to the values of common decency, but I don't think they reflect the values of my police force.

And the question was slightly different, but I think you got to it there at the end when you say, from time to time, you will identify in any system or any structure - - -? ---Failings - - -

- - - there are aspects of it that do not conform to the values that the institution wants to commit to?---Yes.

So, if I can rephrase the question and ask it again, is the Northern Territory Police Force committed to looking seriously at issues identified in this inquest that might possibly be expressive of systemic racism?---Of course, your Honour. We're looking now. We're looking at every possible opportunity to improve our service delivery, our culture, our image, our brand, what we do, who we are and we use the term "Sometimes you've got to look the devil in the eye", and I think that's what we're doing.

And in that vein or in that spirit, is the police force prepared to interrogate the systems and circumstances that led to not a single Aboriginal person being trusted with the knowledge of Kumanjaji Walker's passing in the hours after the death, including a police officer?---I think we've touched upon that earlier today, your Honour. I think there's great learnings from that process. I've heard the apologies that have been delivered by others and including myself, and yeah, I think it's a fantastic, albeit difficult, reflection about an oversight that we could have done better. And I heard the rationale, the reality was it damaged people and and we potentially lose respect and trust in a community as a result.

I guess the question is not if the Northern Territory Police Force isn't prepared to look at this incident and learn from it. But is it prepared to look at it through the lens of systemic racism and ask, ask, not necessarily come to a conclusion, but ask is this systematic less. Are they prepared to look at it in that light and think about it? ---Yes, your Honour, I think we're doing it now. I don't want to play that down and be seen to be smug, but I know there's a great many police officers following this inquest, following my – following others and they are listening. We – you know, I can't express in words what I see as the positives as opposed to the negatives of the journey that we're on. And cultural reform is at the heart of what we're trying to achieve and we will and have looked at rights and wrongs, goods and bads. It's a warts and all approach and it's difficult.

And that's the last topic I want to ask you about and that is cultural reform. And you've detailed in your statement and your oral evidence the commitment of the Northern Territory Police to learning more lessons from this inquest. And it's correct that Northern Territory Police have made and are continuing to make a number of policy changes as a result of the death and the issues that have been raised in the investigation in the inquest, is that right?---That's correct.

And you'd agree that in that sense this inquest, it has already been a positive catalyst for change and self-reflection and reform?---And prior to the commencement of the inquest, your Honour, I think you heard elements of the introduction of the CREC and from the moment of the arrival of the new police Commissioner and the creation of our new executive we've identified this as being a cornerstone and a foundation shift in the Northern Territory Police Force. And it has been difficult to articulate that from time to time through all the complexities of different legal

processes that are currently underway to articulate that broadly, but that's what's been going on.

In light of – I think you've mentioned in passing the Royal Commission of Aboriginal deaths in custody, in one of your statements, you also mentioned in passing the Coronial inquest into Ms Green. Do you acknowledge that notwithstanding this huge amount of activity that's gone on in the police force to consider and review and respond (inaudible), that there is a risk that when the spotlight moves on from Yuendumu and the external public scrutiny moves on, there's a risk of losing that momentum. Do you see any of that risk?---There's always going to be that risk, dependent on the strength of the leadership of the Northern Territory Police Force. But the stability I've seen – and despite fierce criticism in social media and other places, we've remained steadfast and committed to the task that we're trying to undertake. It's been very, very difficult. And we remain committed to it. That's a fact. I haven't seen any wavering of the senior leadership, the executive leadership of the Northern Territory Police Force one millimetre despite fierce commentary to the contrary.

And do you agree that it's important that that commitment be maintained, not just over a few months but over years and in fact – and this is not particular to the Northern Territory Police Force – but Australia has seen the possibility of continued failure to fulfil recommendations in the three decades since the Royal Commission into Aboriginal Deaths in Custody. Would you agree with that?---Yes, I can, your Honour. And I'll draw the straight attention to the strategy back to basics as a ten-year strategy. It's not a three-year strategy, it's not a – it's a commitment over a ten-year period that academic literature will tell you, you know, cultural reform takes longer than four years. It's a commitment that's going to take a decade. And that's the path we're on and that's the path we're on now and the senior executive – in fact I believe all the executive right down to our commanders and superintendents, are onboard with that process.

Just staying with the topic (inaudible) it is the final topic, but of continuing to remember and keep on keeping on implementing recommendations (inaudible) in the past, Royal Commissions, in this case, Coronials, do you agree that this inquest has raised what appear to be values to adhere to the recommendations of the Royal Commission into Aboriginal deaths in custody including, for example, immediate notification of a death in custody to family?---We've acknowledged that deficiency, yes.

And including also, for example, recommendation 60 which related to violent or rough treatment of Aboriginal persons and we'll use the dragging as an example. Do you agree that that shows falling short of meeting those recommendations?---And again, your Honour, we've apologised for that to the family.

And do you agree also that given the reforms that have been implemented and are being implemented to improve cultural awareness training and the like, that that shows that really the Northern Territory Police Force is still working on, for example,

Royal Commission recommendation 228 which relates to the training about interaction between Aboriginal people and the police. Would you agree with that?
---Major scope of works, your Honour.

My question then is do you think there's value in institutions like the Northern Territory Police periodically committing to and publicly reviewing and reporting on their implementation of recommendations like those?---Yes. And we do. There's a process for reporting back to the Coroner's Office on implementation of recommendations from previous Coronial investigations. It's tracked, it's monitored. They form part of our risk matrix of the police.

And given the breadth of issues raised in this inquest and what will potentially be the significance of the recommendations, would you agree that really exactly that sort of periodic review is going to be something very important to make sure that the work that's gone into this inquest is not for nothing?---Absolutely, your Honour. And I'm not going to pre-empt anything that may fall from – but already the Northern Territory Police Force was waiting for that process so we can commence the next part of our journey through this process. Project teams, how we're going to deliver it, training, you know, things that we think we could – I've identified a number of things we've done immediately, but I'm sure this body and your Honour will come up with recommendations that we can then take forward to implement to improve all the things that we've talked about. That's – it's something we look forward to. It's not something we're trying to avoid. It's something that we're actively trying to be part of so we can help shape the future of the Northern Territory and in particular the Northern Territory Police Force. It's critical.

My last question is NAAJA – I'm giving you an opportunity to comment on this – NAAJA anticipates at this stage at least, submitting that because of the breadth of issues targeting this inquest, the significance, likely significance of the recommendations that the Coroner should build in some sort of public reporting mechanism into the recommendations. Does that sound sensible to you, just as a matter of logic?---I might be naive, your Honour, I thought there was already – that fully existed. I thought there was – I'm assuming we reported to parliament on it or through an annual report or something. I can't – it's late in the day, I can't think – but I thought - - -

(Inaudible)?---I thought we were doing something like that now, yeah.

THE CORONER: You're certainly reporting, whether it's public, I'm not sure.

MR MURPHY: But certainly something like that sounds sensible?---I have not got a concern with that, no.

THE CORONER: We've got ten minutes. Who would like to use ten minutes.

DR FRECKELTON: I've got something to report to you on, your Honour.

THE CORONER: Yes, thanks, Dr Freckelton.

DR FRECKELTON: Your Honour asked for information on CSAPM meetings. What I can say to you is that - - -

THE CORONER: So these are the Community Safety - - -

DR FRECKELTON: Action Plan meetings. Your Honour will recall that an issue that's been identified to you is the proliferation of bodies as well as the burden placed upon everyone, including generously spirited members of communities to attend these meetings, many of whom have (inaudible) remunerated.

I'm instructed that there has been an evolution in such meetings and such entities. There are two which are particularly relevant. There are the CSAPM meetings that you've heard about, but there's another one called the Multi-Agency Community and Child Safety Framework. And the acronym for that is MACCSF.

Now in some parts of the Northern Territory, your Honour's MACCSF meetings taken over from CSAPM meetings. And for instance, in Ti Tree, Kintore and Yuendumu, that's the situation.

THE CORONER: So that we've now got MACCSF meetings, not CSAPM meetings?

DR FRECKELTON: In some parts of the Northern Territory, yes.

THE CORONER: But In Yuendumu.

DR FRECKELTON: And Yuendumu is one of them.

THE CORONER: Yes.

DR FRECKELTON: That's been so in Yuendumu since 2021, I'm instructed. There was a stakeholder meeting on 14 February this year, for instance, for the MACCSF that was attended by a variety of entities, including the police sergeants who generally attend on behalf of the police.

So those meetings have been taking place since 2021.

THE CORONER: Are there minutes?

DR FRECKELTON: I can find out for you, your Honour. I expect - - -?
---Your Honour, I have some knowledge - - -

Deputy Commissioner - - -

May I, your Honour?

THE CORONER: Sure.

DR FRECKELTON: Could you tell her Honour if there are minutes to those meetings, Deputy Commissioner?---They are – they're very similar to the Community Action Safety Plans which was really a police driven focus around community safety. The MACCSF is a broader government agency, multi-agency approach and it was focusing on children, obviously child safety. And they are minuted. They are trialled in a number of localities. Off the top of my head, I can't tell you where, but I know they've been rolled out at a number of localities and they provide a mechanism to do a similar function. But their primary focus was around child safety. They are minuted. There's action plans. They come with a whole raft of activity. And deliver a very, very similar function. And the reality is I accept, as Dr Freckelton says, there's a duplicity of effort with community members going to multiple community meetings about similar functions. So.

Your Honour, my instructions are that these – this entity was developed by Territory Families and there are different components to it and (inaudible) there are multiple events by different entities under this framework. There are child safety meetings. There was one of those at Yuendumu last week. There are community meetings, which tend to take place monthly. There are stakeholder meetings as well and there was one of those on 14 February.

Perhaps I'd ask (inaudible) does exist in terms of the proliferation of meetings. But in specific answer to your question, the CSAPM meetings have moved into MACCSF meetings in some parts of the Northern Territory and Yuendumu, Ti Tree and Kintore are amongst those. By contrast, for instance, Santa Theresa, Harts Range, Mutitjulu, Alpara, Antaria(?), Pupunya have monthly CSAPM meetings.

If your Honour would like more information about that, please let us know. (inaudible) another affidavit for you, but we wanted to let you know the basic information of (inaudible) structure.

THE CORONER: I think we have to come back tomorrow?---Thank you, ma'am.

Deputy Commissioner. Sorry about that?---No, that's fine.

It's been a real commitment?---I look forward to it.

To providing evidence to the inquest and obviously we appreciate that. But we'll adjourn to 9.30 tomorrow. It might be that we have some witnesses to interpose before we return to your evidence?---Thank you, ma'am.

WITNESS WITHDREW

ADJOURNED