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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 8 MARCH 2023

(Continued from 07/03/2023)

Transcribed by:  
EPIQ

THE CORONER: Dr Dwyer.

DR DWYER: Your Honour, I just wanted to note that Mr Robin Granites (?) is here with us this morning. We're privileged to have him here.

THE CORONER: We are privileged to have him here.

Thanks for joining us today.

Yes, and?

DR DWYER: Your Honour, the first witness is Dr Melinda Hinkson. And Mr McMahon's going to lead the evidence from Dr Hinkson.

THE CORONER: Thanks.

Thanks for making yourself available, Dr Hinkson, it's really very much appreciated.

MELINDA HINKSON, affirmed:

THE CORONER: Yes, McMahon.

XN BY MR MCMAHON:

MR MCMAHON: Doctor, just for the record, can you please state your name and your professional address?---Doctor – Melinda Jane Hinkson, and I am currently based at the Institute of Post-Colonial Studies, 78-80 Cirson (?) Street, North Melbourne.

Just before we commence with the broader questions, I want to take you through a very short version of your curriculum vitae if I may. It's very long. I've got a 20-page document here. So I'll just take you to a few highlights. You've got a PhD. Can you just tell the court what your PhD was in?---It's in social anthropology, based on research undertaken at Yuendumu.

And you did your field work at Yuendumu in the 90s?---That's right, 95, 96 in particular.

Between 2001 and 2015, were you a lecturer in anthropology at the Australian (inaudible) University – ANU was it?---That's correct.

And was a researcher?---That's correct.

You have held a Fellowship at the Australian Research Council, Future Fellowship? ---That's correct.

You'd held a recessed position at Deakin University for seven years until recently?

---That's correct.

Until you've moved to be the Director of the Institute of Post-Colonial Studies?---Yes.

You've published a number of books, particularly on Warlpiri matters, culture and issues?---That's correct.

And you've published many journal articles and book chapters, on similar topics, to do with Warlpiri, or similar topics?---Yes.

You've created an exhibition at the National Museum?---Yes.

And you've co-edited two books, perhaps, on the – on the Northern Territory (inaudible) book fair?---Yes.

Is that correct?---Yes.

Now, as you know, I act for the Parumparru Committee, the Justice Committee from Yuendumu, and our submissions to her Honour at the end of the inquest will include concepts that the – that there was a mosaic of factors which led to the shooting on 9 November in 2019. And in order to understand what happened on that day, we'll be submitting to her Honour, in an order to plan for the future, to make recommendations for the future, that not only should we understand the particular moments of that incident, but also all of the factors that led up to that incident. So in other words, to understand the present, as well as the particulars, do you follow that?---Yes I do.

And as you know from our discussions, we've been discussing that in order to understand the mosaic of factors which were operating at that present time, in 2019, it's necessary to understand how it came about, what led up to all of those factors, which have been the subject of so much evidence already?---Yes.

For that reason, we're going to just spend a little while this morning, looking over the 20th century at Yuendumu, and Warlpiri culture, to provide a framework, from which one can understand all of the many factors which have been the subject of evidence, through the months of this inquest. Do you follow?---Yes I do.

So, and as I've said to you a number of times, we do have a – the reality of time constriction, so we've going to move at a brisk pace. The first issue that I want you to address her Honour and the court about, I'd call different phrases, sort of changes, of government policy, change in governments. And I want to put a number of concepts to you, and then ask you to go through them with the court. So those concepts in chronological order, are colonisation. Because we all know about that, we can deal with that very briefly. But then periods of what's known as the protection period, followed by the assimilation period, followed by the self-determination period, followed by what is sometimes called mainstreaming period, or the normalisation period. Followed by the Intervention. And leading right up today. So would you agree that those concepts which I've just put to you, is a – is a

standard way of understanding the history of interaction between not just Warlpiri people and white Australia, but Aboriginal people generally, and white Australia? ---Yes, indeed. So the concepts that you're putting their mark key moments and key names of policy eras through the 20th century, and lasting until the present. Colonisation, as we're all very much aware, involves the – the arrival of the British. The dispossession of Aboriginal people, and importantly from a Warlpiri perspective, and an Aboriginal perspective more generally, the world is turned on its head. We then have what gets called the protection period. This is the title in Australian Government policy that appears for the Northern Territory from 1910 in particular, and under which we have the establishment of missions and settlements, as places where people who had been hunter gatherers, are increasingly forced to live a sedentary life. And protection has the sense of the Neverland's, but of course, from – again, the perspective of Aboriginal people, it means disaster. It means the end of their way of living.

Can I just take you to the next one then, if you could just explain assimilation to her Honour?---Yeah, so assimilation starts in Australia as a policy of absorption from 1937. But it does apply to those people that government defines as "Full-bloods." From the 1950s assimilation is more widely adopted, and then in 1961, it's taken into Commonwealth legislation to apply to all Aboriginal people in the country. The idea being that everybody will adopt the same manner of living, rights, and perhaps beliefs.

So without going into the detail of this particular point, but from about 1961, the word "assimilation" was defined within the Commonwealth legislation?---That's correct.

And it's application (inaudible) series of definitions, I understand. Just staying on the assimilation period for a moment, was child removal a feature of that period? The period of (inaudible) assimilation from 1937?---Very much so. So this – this turns upon this government definition, or classification, if you like, of Aboriginal people as either "Full-bloods", or half-castes, people who are defined by the government as half-castes, are regarded as appropriate for absorption into mainstream Australian society. And it's appalling language from the perspective of the present, but it was not used very long ago, and it's timely for us to remember that perhaps.

Through the assimilation period, there were – am I right in saying that the legislation, generally, viewed Aboriginal people as wards of the state?---Yes, indeed.

They were – Aboriginal people were prohibited from voting, for instance?---That's right.

And then I think everyone will understand, from 1967 census, could you just explain that in one or two sentences?---1967 referendum - - -

Referendum?---Allows Aboriginal people to be counted in the census for the first time. And a series of further legislative changes follow after that.

The next time period, jumping forward to 1972, is generally described a period of self-determination, is that correct?---That's correct.

Department of Aboriginal Affairs is founded in 1972, is that right?---Yes, that's right. And so self-determination is brought into being, sometimes then referred to as self-government, self – self-management, excuse me, rather than self-determination as a mode of governance. And it's established in the Whitlam Government period and it continues then up until 1996.

Now we're going to come back to this period in some detail, but to put it in a brief way at the moment, there was a much greater emphasis on Aboriginal people being encouraged and permitted and facilitated in organising their own lives?---That's correct.

In contrast to what had gone before. And there were significant changes such as the outstation movement, which we might come back to later. Strong growth in community organisations?---That's correct.

And strong (inaudible) community control governance?---That's correct.

And within that period of time which ends in 1996, what we also saw the foundation of ATSIC?---Yes, that's right.

Could you just briefly explain for people who might not be too familiar with ATSIC, since it's come and gone, what ATSIC was?---Yes. So in 1989 the Aboriginal and Torres Strait Islander Commission is established as a major representative body and also a body that deals with the allocation of funding in key areas in Aboriginal expenditure. And it has regional councils, so local representative bodies with local Aboriginal communities voting their representatives onto those regional councils.

And then it was abolished in 2005, is that correct?---2004.

2004. So we're going to come back to that period from 1972 to 1996 in some more detail. But moving to the next period, which I earlier described as the normalisation period of the mainstream period. Where did those words come from and what does that period – how do you summarise that period?---So when John Howard comes to power in 1996 he in essence declares the self-determination period to have been a failed experiment. He speaks of a failed experiment of separate representation and indicates that a whole new approach to the governance of indigenous Australians is going to be brought into being. So some of the first things that happen there is the cutting of significant funding to ATSIC and an indication that the Community Development Employment Projects scheme, which had been very central to the community development period, the self-determination period, that this would be brought to an end. But in essence this was to be a new era of individual responsibility that the approach to governing Aboriginal communities would be on par with the approach to Australian citizens at large.

We'll come back to some of that later, but just sticking with the brief chronology for the moment. Still while – during the period of the Howard government there was in 2007 there was the intervention and in 2012 under the Gillard government there was stronger futures. So could you put those into context of what you've been saying? ---Yes. So just very briefly. The Northern Territory intervention introduces a comprehensive raft of new policy that establishes the particulars of this apparent normalisation. It's on the back – it's launched on the back of the Bringing them Home Little Children are Sacred Report, the Federal Government response to the details in that report. It's launched as a five-year program. And then the Stronger Futures legislation brought in by the Gillard Government in 2012 takes that five year period and in effect turns it into a bipartisan policy approach. Now obviously I've not spoken to any of the detail of what goes on there.

We'll do that a bit later. And the Strong Futures is 2012, was a ten year legislative program?---That's correct.

It picked up Intervention from 2007. So we've heard in this court numerous times (inaudible) 15 year period of legislative program?---Yes.

And I think in our discussions I might have used the word – it seems to be that we're in a bit of a hiatus right now?---Yes. I think that's fair terminology to use there. There's quite some uncertainty at the moment about whether we may be entering a new period of policy making with the Albanese Government with a focus on wanting to implement the recommendations of the Uluru Statement, the Voice to Parliament referendum forthcoming, the Makarrata and truth telling requests associated with the Uluru Statement. But it's very unclear yet. There are many reasons why one would not want to rush to say we are in a new policy period just yet.

Well we won't go there now. So what you've done there is provide a skeletal framework of the categorisation of the relationship between Aboriginal people and from our point of view in particular, the people of Yuendumu and Walpiri people with the governments of the day. What I want to focus on now for a while is – and we can't do it in two sentences. But I want to steer you, if I may, to the relationship between significant events in the past and where we are today. And then in the discussions that we've had out of court, you've obviously referred to the Coniston Massacre and that's come up in court a number of times. Obviously you haven't been here during the court process. So I want to ask you some questions about putting the Coniston Massacre in context, both with regard to its time then and also how it might be relevant now, which it clearly is given the way the evidence (inaudible). Can I take you back to the 1920s and looking at our skeletal chart within the period of protection from about 1910 to 1937 when we switched to the period of assimilation. So in this period of so called protection, focusing now on the area around Yuendumu, in 1926 there was a partial lease granted to William (inaudible)? ---That's correct.

Over a large area of Walpiri land. And in particular over the Pikilyi water area? ---That's correct.

I'm going to ask you to just explain what that water area is, what it means, what the grant of the pastoral lease meant and then I'll take you to issues such as drought and gold mining and conflicts generally before we get to the Coniston Massacre?  
---Yes, okay.

All focussing from 1926 onwards?---Yep. So perhaps the first thing I should just say is in relation to the so-called protection era, that has no meaning at all for Walpiri until the Yuendumu Rations Station is established and Yuendumu itself is established just after the Second World War. So the period of the 1920s to the 1940s is a particularly devastating period. It's the period where southerners, lots and lots of people are moving into Walpiri country en masse for the first time. And these are pastoralists and gold prospectors in particular. In 1926 the lease over what becomes known as Mount Doreen Station is granted and it's granted over an area of the Walpiri estate which Walpiri refer to really as their heartland. It is the only area of permanent water. There are – there's a very unusual geological situation that gives these streams constant flowing from under the ground.

Can I just interrupt you there. I have read elsewhere and you may be able to confirm this, but in living memory and in oral tradition, the Pikilyi has never dried up?  
---That's correct, yes. So even in periods of drought, this was the one area in the huge Walpiri estate that people could rely upon. And it was an area of huge cultural significance, huge significance in ceremonial terms and a place to which large congregations of people would come for ceremonial purposes as well as to take the life-giving waters.

And it's probably pretty obvious, but just to make it clear, the whole region around those springs, which I personally have not seen but have read about, is known for its lush growth, or maybe lush isn't the right word, but good growth - - ?---That's correct.

- - - of trees and plants and so on, and also in the absence of intervening factors, a lot of animals, store food and hunting?---Indeed. So, it's not just a place for water, it's obviously a place for hunting and sustenance.

And it's quite a large area, isn't it?---Yeah, the Pikilyi Estate is, I think, 30 to 40 square kilometres. So, when that pastoral lease is granted, the pastoralist excludes Warlpiri from access to the water, and he does it in an extremely brutal way. There was a huge amount of documentation on the back of, particularly missionaries from Hermannsburg travelling up to find out what was going on in that area, because they had received reports.

So when you say "documentation from missionaries", just to clarify that, what you're saying is when you look at the reports of the missionaries, they are horrified by what they see, and they're writing about the horrors which they see?---Indeed, they write about the horrors of what they see and they're aware that there is very brutal and dehumanising treatment of Warlpiri going on, on that station, that people are being forced to provide their labour in return for very meagre food supplies in conditions akin to slavery. That is documented at the time. They documented instances of

physical assault, of Warlpiri being tied up and flogged and they're being flogged for transgressing their forced exclusion from the springs.

So just to put that in context, they're not allowed to go to the springs and if they do, they've been – there are documented instances of Warlpiri people being flogged because they're trying to get at the springs?---That's correct. And they're also - - -

I'm sorry, I'm just going to keep interrupting you for my purposes for later, you mentioned slavery, can you just contextualise that? So, you're talking about people who are forced to work for food, because if they don't work for food – pardon me, if they don't work, they don't get fed?---That's correct. And at the same time, as I've said, they've been excluded from their own ways of subsisting.

And so in answer to the question, why don't they just go somewhere else in Warlpiri country and get food, and the answer is – I'm now going to ask you this, why don't they? Is it because of the whole border situation which leads to the sudden change that they're no longer able to live in in the way that they were living in terms of access to water and food?---There are a number of factors. So, certainly, there's the exclusion from Pikilyi itself, but there's also the fact that Warlpiri are now in competition for access to their hunting grounds and their water all over their country. So, there are significant numbers of people around. There are other pastoral stations that have been established. There are cattle. There are hooved animals that are despoiling water sources.

So just to make that clear, when the cattle had unimpeded access to water sources, that ultimately destroys them for the purposes of human consumption?---That's correct.

Because a lot of these water sources are soaks, as in, you might have to dig a little bit to get some water, or there are very small amounts of water appearing on the surface. So for cattle and other hooved animals, the water sources become of no use to humans?---That's correct.

And just to keep pushing this point, once you have that reality with regard to water and food, as a group of people who are attending it prior to that to move around in relatively small numbers, that's correct, numbers like 30 or 40 people moving around - - -?---Yes.

- - - from one place to another. The next step which has become an inevitable step is to move to places where there are sources of food?---That's correct.

And that is western food?---Yes. And so that means the pastoral stations and it also means the Granite goldmine in the next few years.

The gold – while we're just on gold, the goldrush was in the 1930s. Is that right? ---That's right.

And that saw a large influx of white people from different parts of Australia?



---Correct.

Who then began also to compete with whatever water was available (inaudible)?

---That's correct.

Now, perhaps that might be a good point to – well, another example that I've read, I think possibly in one of your books was about – just to give you an idea of how much suffering was going on, I might take you to two or three examples. There is a reference in one of your books to a large number of women and children being chain-ganged and walked from the area near Yuendumu to Alice Springs in chains?

---That's right. That's actually from Mount Doreen Station.

To Alice Springs?---Yes.

Some several hundred kilometres?---250 miles.

In chains. You've – either your books or other works refer to what are called "Raids on camps". With regard to the women and children being chain-ganged and walked (inaudible), can you just explain that for her Honour?---My understanding is that there was a – there had been a death of a white man and there was some investigation going on into that death and these people were chain-ganged into Alice Springs as part of that process.

And despite the significance of that event, there was in fact also other explanations are given to do with an - - -?---Killing stock, yep. Killing and eating stock.

So, whatever the explanation, it never occurred that the explanation, there might be more than one reason for it?---Indeed.

I was just asking you about raids which turns up in the literature, can you just explain that to her Honour?---So - - -

And the time period you're talking about?---So, this is – again, takes us back to some of the early period at Mount Doreen Station and the instances of brutality that were being investigated in relation to this particular pastoralist, there were many instances, documented instances, of venereal disease being found among the young Warlpiri women and girls, and reports of mounted stockmen, in effect, raiding Warlpiri camps and kidnapping girls and young women and taking them off.

So in that context, you've spoken about the brutality of the period, the lack of access to water, you mentioned the drought which you would agree that the – what the literature shows about the drought is that it was a particularly harsh drought during the late twenties and early thirties?---That's correct.

Which led to a lot of suffering in itself. Now, in that context and also – in that context, can you then describe, well where does Coniston fit into that; I mean the Coniston Massacre?---Yeah, well Coniston is really the culmination of all of those pressures. It's one particular climax where Warlpiri are in competition again for access to water

and very importantly, there – what we understand is that there was a fairly profound miscommunication between Warlpiri and Fred Brookes, who was the man whose death sparked the reprisals that led to Coniston. And this miscommunication again was around women, around the use of Warlpiri women, exchange relations between, in this case, a dingo trapper and a local group of Warlpiri who were camped in that area. And we all know what happened after that.

Now, I want to come back to it later, in terms of looking to the future with regard to Mount Theo, in our discussions you have said to me, I just wanted to clarify this for her Honour, to understand this period of time, and the long term consequences that it had on the people of – the Warlpiri, but for these purposes, people of Yuendumu, that the loss of that area, which is now called Mount Theo had profound consequences in a number of different ways. And obviously, what we might loosely call economic, but also other ways. And perhaps you could just briefly discuss that? ---Sure, so this is, as I described before, the Warlpiri heartland, from the perspective of Warlpiri people. And they continue to be excluded from this country, all from the time that the lease is granted, right up until the present. So that's very significant in terms of thinking about what colonisation is, and does. It makes it clear that these are not events that live separately in the past, but they're structured relationships that continue to run right through to the present. So a place like Pikilyi, the dispossession of that place, has profound consequences for Warlpiri people. Spiritual, cultural, social, psychological, and indeed, economic. So this is a station that was sold last year for \$70m, land and stock combined.

Had it been in the same family from 1926 - - - ?---It had - - -

- - - until last year?---For three generations.

I'll have to come back to that at the end, in terms of looking to the future, but – we'll come back to that at the end, if you don't mind. But – the fact that it was sold, that it didn't go to Warlpiri people, and what implications (inaudible) future. Just staying on the Coniston for a moment, you're – you personally know Dr (inaudible) also had a statement on the brief. And I'm not sure whether it's in her statement, or in one of her other – she's also written a great deal about Warlpiri please. But she talks about the – from the point of people in Yuendumu today, and linking back to the Coniston Massacre, there are a number of striking similarities, which people talk about, and three that's in particular, at that in both instances, people was essentially was the state through the police shooting. In the first instance in Coniston, (inaudible) Camps. That is, the home, and also that it's happened here. And in Coniston the – those who were involved were ultimately acquitted. And in this case, Constable Rolfe, and we're not challenging that at all, but also was ultimately acquitted. So those parallels have a striking significance for Warlpiri people, don't they?---They certainly do.

Just before we leave Coniston, there's – we might come back later to the effect of media and public perception of Yuendumu, and how media deals with that. But can we just go to the media back at the time. You've written about a journalist whose name was F.E. Baume and can you just tell her Honour and the court, given what

we've just discussed in terms of the 1920s and the 1930s, the drought, the conflict, the Coniston Massacre, the treatment of Warlpiri people, and then the gold rush. And then Baume comes along and writes prolifically about this area. About the Warlpiri country and Warlpiri people. Can you just tell the court the sorts of things that were being written at that time, in terms of – and the significance of it for – for – for the region?---So F.E. Baume goes up to explore the Granites gold rush. And he writes a book called Tragedy Track. He's – he's travelling up through Warlpiri country, along what we now know as the Tanami Highway, or the Tanami Road. Very much at the time that that road is being ebbed out by people heading up chasing the promise of gold. Now it's a book that is profoundly revealing for Australian attitudes to Aboriginal people in this area, at the time. He gives a very, very chilling sense of the separateness, the suspicion, the sense that – that people in the bush were barbarians, and that they stood in the way of national development. So this is a book that celebrates the work that the white pastoralists are undertaking, that really heroises them for the difficult work they're doing, in difficult circumstances, and in great isolation. And it's a book that should be widely read I think, for an understanding of those attitudes at the time. He basically canvasses in this book, a set of attitudes that legitimises the dispossession of Warlpiri people, on the one hand, and also legitimises their exclusion from Australian society, on the other.

So dispossessed, but not placed somewhere meaningful, but disposed and left on margins?---Pushed to wherever they can find a place, in-between the tracks of all of the other interests that sit above them, which include very much, the interests of livestock of course.

I think it's probably well understood in this court, but just – just for the record, when a white person might be disposed from their home, through some kind of government action, and forced to live somewhere else, and that can be deeply and disturbing, but can you contrast that with what it means to be an Aboriginal person, who's sense of being, sense of who they are, who's religion and relationship to the land is on such a vast and different nature to a white persons, can you – can you just explain, perhaps in – in a few sentences, for the record, for our submissions later, what it means to be disposed of your land, if you're a Warlpiri or an Aboriginal person?---So there are many responses I could give to that – to that question. But the most powerful interpreter of dispossession, and of that cross-cultural reading of home, is WEH Stanner (?), Australian anthropologist who delivered the 1968 oil lectures. Some will know his work, *After the Dreaming*, in that context. And he writes explicitly on this concept of home. Or "Nguaarra", N-G-U-A-A-R-R-A. And he lists the multiple levels of significance that go with that concept. It can be a camp, it can be a half, it can be a place of everlasting spirit. It is a particular ground and context, where people and their ancestral inheritance come together. I could go on, but I'll stop there for now.

Yes, (inaudible). One of the things that's come up in court, and you've dealt with briefly already today, is the connection between then and now. In court we've used the shorthand expression of the Coniston Massacre, and you've elaborated on that over an entire – one part of an entire period (inaudible). But in one of your books, you have a picture, from 2011.

Which I'm going to ask [Edited] to put up on the screen now.

I might just – just excuse me for a moment. It just happens that I have in front of me the book, *Remembering the Future, Warlpiri Life Through the Prism of Drawing*, which is a book that you've written. And in that book, in chapter two, you have a number of pictures. And this is one of them. Now, can you just explain to her Honour, what that picture is, when it was drawn, and what it means?---Yes. So this was a – a drawing made in 2011 by a senior Warlpiri woman who is now deceased. I'll just call her Kumanjayi, for the purposes of this discussion. But what she has drawn here is the scene of her recollection of being an eye witness, being present at the scene of her father's killing. So this is – this is one instantiation of the Coniston Massacres. And if I just do a very, very brief interpretation of the drawing for you. You have the long brown oblong in the top of the picture is a rocky outcrop. You have the yellow of the ground and you have a series of figures in arc shaped which are people. The drawer, the young girl – it was a young girl at the time – she is one of these two very small green arcs on the right hand side in the middle of the drawing. And she's watching across through the landscape and she has drawn the figure of her father standing, which is the arc, the brown arc right on the other side of the drawing, the left hand side, and then him lying on the ground deceased, which is the green line very close to that oblong. So it's an extraordinary drawing and it's a very powerful memory that this woman obviously carried through her entire life.

THE CORONER: Do you know how old she was at the time of the massacre?  
---I think she was about 5.

MR MCMAHON: Your Honour, we put that drawing in the chapter from that book into evidence (inaudible).

I think we'll leave the Coniston and that era now and just turn to, I guess, the final point is that following that period which on the one hand had all of the horrific things happening which have been touched on ever so briefly. And on the other hand there were a number of people who also were influential in their own ways, such as the missionaries who were shocked and disturbed at what they were seeing and who were writing about it. So it wasn't one or the other, both things were happening simultaneously. And out of that – well one of the things that came out of that was Yuendumu being established in 1946, is that right?---That's correct.

And one of the reasons that Yuendumu was established – correct me if I'm wrong – was that it was actually a place of some sanctuary?---That's right. So in that period leading up to – well through the 1930s and 1940s there's in effect a campaign for the establishment of Aboriginal reserves as places where people who've been pushed off their customary lands can have some certainty of security.

So I'm going to skip any detailed analysis of the assimilation period. Not because we want to, but we just have to choose our battles in the time that we have. Now I want to take you to the self-determination period which is the 1972 to 1976 period. And it's clear from not only your writings but from speaking to our clients and many other sources of writing and so on, that the period 1972 to 1976 is seen as

something of a high water period, of a period that is remembered with a lot of positive commentary. So I want to take you there. We might start with what Yuendumu was like right at the beginning of that period and we'll talk about a report that was in 1974 by Dr Coombs, known in Australia often as Dr Nugget Coombs and the anthropologist who you mentioned before, WH Stanner. Now you said that WH Stanner - - -?---WEH.

WEH Stanner. You've said that – how renowned he was. I think we should just make it very clear just how renowned he was, because he's going to turn up in various places between now and the end of this inquest. So he would be regarded as the leading anthropologist of his era?---That's correct.

And amongst many other things that he dd, he wrote a lot, correct. He gave the Boyer Lectures to Australia one year?---1968.

1968. Perhaps you could just explain the significance of those Boya Lectures in terms of Australian understand of Aboriginal society?---Yes, sure. So I mean one thing Stanner does in those Boya Lectures is he names the great Australian silence, as he calls it. He's the first Boya Lecturer to directly address the problem of wider Australia's relationship to Aboriginal people. And he does it in an extraordinary expiring way. He has a gift for writing. He had been a journalist and he wants to compel his reader to take seriously the depth and beauty and sophistication of Aboriginal religion and Aboriginal society. And so in those lectures he takes his audience, his listeners on a journey into the heart of some of the places where he has worked and then he poses the very large questions for Australian society in respect of the future place of Aboriginal people in Australia and a time when the policy attitude is beginning to shift. He's had the 1967 referendum the year prior, so there's the feeling of a new kind of optimism and openness towards a different kind of deal, if you like, for Aboriginal people. And it's out of those sorts of ideas that this idea of self-determination is borne and all of the policy changes that come with that.

But as luck would have it, he was in Yuendumu in 1974 for some time with Dr Coombs. I'll just briefly explain to – or ask you to confirm. You know who Nugget Coombs was of course yourself?---Yes.

He was the inaugural Governor for Reserve Bank from 1960?---Yes.

Chancellor of the University Counsel in establishing the Australian University?---Yes.

Australian of the year one year, 1972?---Yes.

Secretary of the Department of Post War Reconstruction I think?---Yes.

And we've got a long list of roles within the Australian society dealing with Aboriginal issues such as Inaugural Chairman of the Council for Aboriginal Affairs for 1967 for about ten years?---That's correct.

And then an advisor to the Whitlam Government on Aboriginal affairs?---Yes.

And we could go on. But he's one of the most eminent public servants Australia has ever seen?---That's correct.

Now if I could just ask you to put up this document which you have there.

I'm just putting up on the screen a document which is now – it's been – put onto the brief so - - -

DR DWYER: 20-16A.

MR MCMAHON: Thank you, Doctor. It's published in 1974 and it's a report on a visit to Yuendumu and Hooker Creek. So Hooker Creek is now Lajamanu?---That's correct.

By Dr Coombs and Professor Stanner in March of 1974. You're familiar with this document?---Yes, I am.

And you've referenced it elsewhere in some of your research?---Yes.

I'm not going to spend long on this because it's a lengthy report and it's not necessary to go through it here now. But can you just describe perhaps generally what one might gain – what insight one might gain from reading this report, bearing in mind the almost remarkable coincidence that almost 50 years ago to the day we had two of our most eminent white Australians trying to write a report with a view to improving life at Yuendumu. So it's a happy coincidence and 50 years seems like a good timeframe to bring this document back into the limelight, if I may. So what does this document teach us now?---So it's very significant that their visit is really at the end of the assimilation period and the beginning of this new era where Aboriginal people in remote communities are to be given a much greater sense of choice about how they would live. So what Coombs and Stanner do is they obviously talk to people in a great amount of depth in both of these communities that they visit and do quite an extensive survey in order to understand what the sorts of challenges are that people are dealing with at that time and what the possibilities are for an economically more robust situation than both places have in the period that they are there. Coombs given the background that you've described, is very much focused on economic development, on the possibilities and is very much attuned to Aboriginal culture. And the Council for Aboriginal Affairs is really the vehicle for bringing into being a new policy approach to the governance of Aboriginal communities, particularly in remote Australia at this period. So there's a great deal of interest in the variety of different kinds of enterprise that looks to be possible from environmental and wildlife sanctuaries sorts of options to running an abattoir, to cattle work to yeah, many, many different sorts of work that is all canvassed and laid out.

Housing construction?---Housing construction.

We might come to it later but that in particular was talking about Walpiri people being involved in the entire project of housing construction, consulting with architects, working with builders and doing the building of the housing?---That's right.

And we've heard evidence in this court already about the deplorable nature of housing for Aboriginal people at Yuendumu, for many of them. So it's quite a stark realisation to see that this was a live issue with solutions being proposed 50 years ago. But we might come back to that at the end. In our discussions, Doctor, out of court – and I just want to bring these concepts into what you've been talking about –

Pity if it's not transcribed after all this effort.

THE CORONER: I've got good notes, Mr McMahon.

MR MCMAHON: In our discussions on this document you spoke to me – and I'd just like you to develop this with her Honour a bit – about the significance and impact for you personally when reading this document again, when you're seeing concepts like flexibility, choice, mobility. Now one of the issues we're going to come to later as part of an analysis of the intervention and the impact it had on the community of Yuendumu, is if you like, the opposite of that. So I think it would be helpful to just give us a bit of a framework as to what the policy initiative was 50 years ago and the insight into the significance of flexibility in options with regard to employment and mobility?---I think it's really important to recognise that Coombs and Stanner were not ideologically opposed to assimilation. They were opposed to the idea that Aboriginal people should not have choice. And as people who were hugely respectful of the depth and breadth of Aboriginal culture and the significance of people's attachments to land, it was terribly important to them that any kind of canvassing of economic possibilities had that sort of recognition at its heart. So everything they write about in this report leads with the expectation of some degree of community control of ideas for the future being led by Walpiri people themselves and being very realistic about what the range of possibilities were.

Can I suggest that when you read the report it's an overwhelming impression, despite the language and to some extent the paternalism which is there in the past, there's this constant message through the document from 50 years ago that every step that they recommend involves complete consultation with Aboriginal people an finding out what it is they want to do with regard to the step that is proposed?---Yeah, indeed. In fact I probably prefer to use a different term than consultation because it has become so hollowed out in the way that Aboriginal people are consulted, quote, unquote, in the present on absolutely everything.

Well it's come to mean to many Aboriginal people, doesn't it, that consultation means someone arrives and tells you what the new plan is?---Exactly. This had a completely different ethos to it.

Well we'll change the word consultation and go back to the broader point of the writers and the authors. And what makes this so important of course for our purposes today is who they were and their role in Australian society. So bearing that

in mind, the language they use is to ask and find out what it is that the people that they're working with actually want to do?---That's it. And the heart of that is the idea of a community governance structure that presumes that the bulk of this work is going to be taken forward by a local authority that is being constituted in a form that absolutely makes sense to Walpiri people and is grounded in their own customary form of decision making.

Can I just ask – if you could just go to page – we'll go to page 6 and 7 just very briefly. Not to – if you just slide down page 6, say to par 20. I'm sorry, you're probably looking at pdf pages, so they're numbered up the top. So par 20 as an example. There's some recommendations. They might be a bit hard to read on the screen. But what the authors are recommending was policy be directed to strengthening the role of the community and its council in the administration of its affairs. And you can see that they're recommending that on all the councils' provisions be made for the nomination of others, various clan language and tribal groups comprising the community. And if you flick over to page 7 please on the screen, down to par 21. We're just going through some pictures there. Just stop there. Just go up a bit. That's actually Hooker Creek. That's an example of the kind of work that was being done by Aboriginal communities at that time and building houses and so on. Go down to par 21 please. And you'll see there that the authors are saying that policy be directed to entrusting to the community and its council greater responsibilities for law and order. 21A, the appointment of a justice and conciliation committee. B, status as associate justices of the peace. And so it goes on, on suggestions how to run law and justice communities 50 years ago in Yuendumu. And if you go down to the next page of par 25 please, you'll see at the foot of that page under housing policy. They're recommending policy in respect of housing. (inaudible) communities be based on support for housing association with maximum local involvement in management, manufacture, design and construction. So it's probably stating the obvious, isn't it, that those are illustrations – thanks for that, that's all we need (inaudible). Those are illustrations of the philosophy that was developing in that time?---That's correct.

And then – which did in fact develop to – and this is spelled out in parts of your statement, a large number of organisations and community controlled organisations doing that kind of work. So what we've just been going to, to put it in context, that report, the Stanner and his Boyer Lectures, the visit by Coombs and Stanner to Yuendumu, the legislation in the 1970s – which I haven't asked you about and we'll just perhaps skip over this part – its incredible importance, but – the lands rights legislation and all that came of that. We can just – that's the foundation of the period that you've described as the self-determination – period of self-determination. Can we go there to the – through - up to the 90s. And we've had witnesses in court give evidence about what their life was like in various areas at the beginning of the inquest, particularly with regard to school and local council operations. What was the philosophy during, in terms of legislation, during the period 72 to 96, in terms of government – Commonwealth Government especially, legislation. The philosophy behind it, you've described to me the community unit. Can you just explain that to her Honour?---So the – in terms of the way legislation works through that period, the community becomes the key unit of focus. We have whole raft of different



community organisations that are established, under the *Commonwealth Aboriginal Councils and Associations Act*. Which is established alongside the *Land Rights Act*, and other acts, through this period to give particular forms to some of the activity that was going on in this new period of time, in remote communities. So what that meant, in essence, on the ground, in a place like Yuendumu, is that you had a – what was a very vibrant community sector, a public sphere, if you like, where people were working in art production, in a media association, in – in a cattle company, in the mining company, in the housing association, in a work shop for fixing cars, at the school, and so on and so forth.

Outstations?---And outstations was a separate, very, very significant area of activity again. Perhaps a dozen Warlpiri outstations radiating outwards from Yuendumu, and very significantly, a whole new town that ends up establishing out of its birth of an outstation at Nyirripi, 150 kilometres down the road. So what's very significant there I guess, in terms of a concept of community, is there is again this openness for recognising the – the flexibility of Warlpiri ways of organising their family units. That if you – if you have a large settlement, as Yuendumu had become, it can become a really complicated place. A place potentially with stress. And so having outstations did a number of things. It allowed people to go and live on their ancestral land, and look after their country, and live in much smaller family units than they would in the town. And they had provisions via the – the form of welfare payments, the way they operated through that time, to do that work as well.

One of the expressions that I've read somewhere, and (inaudible) discuss it, is people were able to think about what they were trying to do. What they were trying to build. Can you just develop that idea a bit?---Yeah. There – am I speaking to the 1990s - - -

Yes - - - ?---At this point? Yeah, okay.

- - - well – the whole period, what we're calling self-determination period, but the most interesting part now for this court, I think, is probably going to be the 1990s because of how – in terms of witnesses and events, it's so connected to the present?---The – my observations in the mid-1990s was that Warlpiri people were working very tirelessly to create something called a community. We need to remember that community is an artefact of the legislation, if you like. Warlpiri lived in very, very different ways, prior to being bought into settlements, and then being bought into this – this new era. But it was a very hopeful period. And it was a period in which that sense of having a capacity to build things that work locally, at the same time as being connected into the wider society, was very apparent to people. I describe it in my work as not self-determination. Not something that – that we could describe, or define, in those terms. But rather, a vibrant scene of intercultural activity, meaning that Warlpiri were working very closely with white advisers, and other employees, and collaborators on their project, in order to build up the new kinds of expertise that they required to do this work.

And that was being done successfully?---It was hard work. It was really hard work, but it was work that people were really committed to.

I mean I don't want to over – make the mistake of over-idealising the period from the past, and there were obviously many hardships at that time as well, but both at the time, but bearing in mind that you were there for quite some time during the 90s, and in terms of Warlpiri people from Yuendumu looking back, it was seen as a period where things were going pretty well?---Indeed. Yeah, people felt that they had room, they had room to make decisions. They had a sense of the possibility of being able to choose between different options. For example, to live on an outstation, or to spend time in the town. And for a period there, it was possible to do both. People could move between the outstations and the town, in a relatively straight forward way.

Can I take you to a concept that might fit in here – talk about – Richly(?) talked about, and other people have written about it as well, two ways?---Mm mm.

Doing things in two ways. And we've learned a little bit about that in terms of language at school, but the bigger picture, can you just explain how what you're describing now, that period of 72 to 96, and the development of the way of thinking, the two ways, way of thinking?---Yeah, so two ways is the language that I was familiar with Warlpiri using, and others living at Yuendumu, used to describe the ethos of that time. It was the proper way to do things. And it was the conjoining of Warlpiri knowledge, Warlpiri principles for – for approaching any kind of problem solving, along with European law, elements of European law. So the idea of two – two way education, is where that concept starts, in the school. But Warlpiri took it, and they applied it across their community sector at large. So the vibe, if you like, in a lot of these community organisations at the time, was a Warlpiri person and a non-Warlpiri person working side by side. And doing this very intense and productive work of learning from each other, in relation to how you make a business work for example. And the way a business might need to be steered in order to look after the things that really mattered to Warlpiri.

One of the other ideas that is part of that same broader analysis, is what's sometimes referred to as bi-cultural. Bi-cultural people, bi-cultural leaders? ---Mm mm.

Would you explain that concept to her Honour, and how it fits in with what we've been saying?---Yeah certainly, so – certainly bi-cultural leaders – the leaders of that generation, the people who were most active in the community sector, in the 1990s, had grown up as assimilation era children. They'd had a very strict education in the school. They had the experience of going to school, and being prohibited from speaking Warlpiri. There are all these things - - -

And boarding schools?---And boarding school, and in some cases, travelling interstate to study at university. They had also had a very – a very strict education in Warlpiri culture. And so I was educated, if you like, and learned from a number of these leaders, who had an – had, and have, a number of them are very much still with us, thank goodness. They have this incredible capacity to dig very deeply into their own cultural repertoire, and apply aspects of their own value system, to

understanding white Australian society, for example. And they were very keen, and careful watchers of white people, and the ways they did things. So a – a generation of Warlpiri philosophers, if you like, who had this incredible capacity to look in two different directions at once.

Can I take you - - -?---One of you is in the room with us today, if I can be so cheeky as to identify him.

A lot of these relate to this period set out in your statement, and I won't go through them now. They're there for the record and we'll go through them in submissions and so on. And you've covered a lot of the issues, and in particular, these pars 22 onwards. And you've covered the many institutions and associations, networks, museum, housing and so on. And again, a key point of what you've been talking about is flexibility. And to just give an example which has resonated with me, I must say, is where you might be in some kind of employment and in a good and meaningful job, but where you also need the flexibility to commit – to fulfil your cultural responsibilities, such as taking a significant period of time off to go to a funeral, which might be a long way away. And so, whereas someone in the city might say, well you've got a job, you work 9:00 to 5:00, say four days a week. You shouldn't just disappear to then go to a funeral for a few weeks somewhere else. That lack of flexibility, which is not uncommon in the urban environment, needs to be reimagined, if you like, in terms of how to have a productive working life doing it two ways; one being honest and (inaudible) engaged and committed with your own culture in terms, for instance, ceremonies and funerals, but on the other hand, working in a workplace which, in many ways, might resemble a workplace in the city?---That's right. So, the CDP program enabled that kind of flexibility, allowing people to have the assurance of a base welfare payment, and then the capacity to work a flexible number of hours to make a further income on top of that. And in my experience, there was always a great deal of flexibility and understanding through that period of the 1990s in relation to recognising the family-based and cultural responsibilities that people carried that might stop them being able to work what we regard as a standard working week.

The next two topics I'm going to take you to are the mainstream period, the intervention period and I also do want to spend some time on this CDEP and then CDP program because of its great significance in the community life in terms of employment and income and so on. It might make more sense to first look at the structure of the Intervention and what the Intervention did broadly. And then we'll come down and focus on the CDEP and the CDP as a particular illustration of that period, and the significance of it. Does that make sense? So, in your statement at par 56, you outline a number of interventions. Have you got that there?---Yes.

A number of Intervention measures. Perhaps it might be useful first if we can just go through those quite quickly. I think her Honour will now be familiar with them and the people in the court will now be familiar with them, but you've identified a number of measures such as compulsory – this is the 2007 intervention clause?---That's correct.

We'll take it as given that people are across that now, but the compulsory income management quarantining of 50 percent of welfare and being directed how to spend that money?---Correct.

Compulsorily leased properties in Aboriginal communities. Can you just explain how that changed from the land rights here to the compulsory leases?---Yeah, so the Yuendumu Land Trust was established under the terms of the *Aboriginal Land Rights Act* giving Warlpiri traditional owners authority over, you know, much of went on under – in those areas. Under the terms of the intervention, the federal government, in effect, took hold of that township lease and relatedly suspended the permit system that had previously sat with local traditional owners and their land councils to give them authority over who could and couldn't enter their land for all manner of purposes.

So the relationship to ownership changed and the relationship to providing access to the land changed?---Yes, although it's a lease, okay.

Yes?---So a five year lease that's been compulsorily acquired.

And business managers were appointed?---Yes.

And they had extraordinary powers?---They did. They were appointed. They were often – well senior federal public servants. They were appointed as the prime authority mediating between the local community and the government and they were given legal authority to attend any meeting and to expel anybody from the community.

Now, there were a lot more features of the intervention, but I think generally over the period of the inquest, some of them have come up, and I will take you later, perhaps, particularly to policing as one of those features. But it might be useful to use the CDEP as an illustration of change over that 15 year period. So the CDEP has a long history. It goes back to the 1970s. Can you just explain what CDEP stands for? ---It's the Community Development Employment Project Scheme.

And although the acronym CDP is indeed an acronym, CDEP, and rolls off the tongue, the emphasis in the 70s and for the next 20 years was in fact community development?---That's correct.

And the numbers started in the Northern Territory, went to a few communities, about three, and then gradually increased over a 20-year period with a focus on community development as to where the program was implemented. So, if you could just give an explanation of what that means when you're talking about community development within the CDEP?---Yes, indeed. So, what was significant about the CDEP is that it granted money, not to individuals, but to organisations. And the high watermark, if you like, of that kind of activity was the establishment of some of the largest and most successful Aboriginal organisations in the Northern Territory. And here, I'm not thinking of Yuendumu, but a place like Maningrida, for example, where you have an organisation called Bawinanga Aboriginal Corporation that looks after

outstations, that looks after an art centre, that looks after a supermarket, that looks after a number of really significant modes of activity, is employing people to work in each of those. But it's enabled by the way the money works through this program to support an organisational size unit, rather than just discreet payments to individuals.

The local leaders in the community, and of course, my focus is on Yuendumu, but if the local leaders who formally had access to the grant and could employ the local people pursuant to the grant have less funds. And that's how we get to the point where we've heard some evidence, we get things like a toilet fixed straight away, because the local council is employing someone under the CDP?---The local Housing Association.

Would employ someone to go and do the job straight away, the same with windows, or all those kinds of issues. Now, it's beyond the scope of what we're doing today to review the whole history of the CDP, but you've explained its fundamental purpose and nature, and then it grew steadily for – right up until the period of intervention and went through many – well a number of manifestations and so on. We probably don't need to go through all that in too much detail. But just talk about how the fundamentals, how the fundamentals changed?---Well the real fundamental is that you have a shift from a focus on community development to a focus on individual responsibility.

And when did that happen?---So it happens with the abolition that – well the promised abolition of CDEP under the terms of the intervention. Some of you will recall that a Labor Government came in in 2008 and put a moratorium on the end of CDEP.

So just going back one step. With the intervention came the announcement and policy initiative that the CDEP would come to an end?---That's right. And - - -

And that's from the middle of 2007?---That's correct.

Followed by an election which saw a change of government?---That's correct.

And the new government, which was the Rudd Government, made a policy announcement that it would freeze the dismantling of the CDEP?---That's right.

Keep going?---But the process was already in-train. So quite a significant number of CDEP programs had been closed by that stage. And there was still this very much this onus on new funding arrangements that wanted to compel Aboriginal people along the lines of individual responsibility rather than community development per say.

So that's an ideological position?---That's correct.

And I've read that that ideological shift, if you like, you could call it a policy shift but it's also an ideological shift, has been described as an experiment in social engineering?---That's correct.

Could you just explain that concept, because if I may say so, it seems to capture the nature of what was going on?---Yeah. Well it's been written by a number of scholars that what we see in this shift, this shift in government approach, is a deliberate attempt to change the behaviour of Aboriginal people. And if we were to go to another level, to remake their subjectivity. And what that means is really the idea that we can imagine Walpiri people might be compelled to live like white fellas, if I just put it in those terms.

And so there's the language of getting your own home, getting a job. And the social engineering aspect also led to the policy embracing while moving from a remote area to a larger community, to a larger community from a community like Yuendumu up to a town like Alice and so on?---That's correct. Look, there's a lot of complex shifting policy that one would want to go through to speak to the detail of what you're getting at. There are a lot of moves that go on that obviously we don't have time.

No. I just want to try and at least get the essence of it. One of the changes which occurred, possibly under the remote jobs and community program that came in in 2012 under the Gillard Government?---Yes.

But I'm not telling you, I'm asking you, when did this shift, ideological shift occur where there was a much greater emphasis on compulsory work in order to receive a welfare benefit?---Yes. So that was in 2012 with a new requirement to work 15 to 20 hours a week to qualify for welfare payments. It then gets hardened significantly in 2015 - - -

Can I just stop you there, just so others can follow? We've got what we might call a period 80s and 90s where there's a lot of work being given out by community leaders, community elders, by cultural leaders working two ways with funding to create employment in the community. And then am I correct in saying that each of the changes that we've gone through in the last five minutes from 2007 through to what we're now talking in 2015, sees a complete shift away from that?---That's correct. Because what the Northern Territory intervention says is that things have not been working in remote Aboriginal communities and there are many things to unpack there. But, at the heart of it, Aboriginal kinship and people's kinship responsibilities and ways of organising their communities through kinship models are themselves problematic. So the only future that is being imagined for Aboriginal people is to learn to live as responsible individuals in nuclear family like scenarios with the kind that we are familiar with.

The emphasis on the individual as opposed to the community can mean to the Walpiri people, not because it's Yuendumu. The nature of one's self – the nature of identity, what you're talking about is a shift to an individual – individualism if you like. While it might sound something that we can comprehend readily, that's just a shift in policy. Can I ask you to comment on whether there's something far more fundamental going on when you're shifting through social engineering a community of people from one way of being and seeing themselves, born into skin groups and so on, to the focus on the individual. Is that a topic that you can sensibly discuss in

the context of this inquest and what we've been talking about?---Yeah. You are asking people to unbecome who they are. This is something that again Stanner wrote about. From a Walpiri perspective, to be regarded as a free-standing individual first and foremost, is a devastating prospect. because it shears you of all the relationships that give you your identity, that give you your sense of who you are. And those relationships are not – they're not arbitrary, they don't just hang as a social network. They connect you to the country from which you also take your sense of who you are and for which you have responsibilities. They relate you to the entire community in very particular ways. And indeed, responsibility flows through those relationships. So the idea of an individual responsibility, which from a government perspective is about the individual to the Australian Government and the individual to the Australian society, absolutely cuts through that propound set of relationships that lie at the heart of what it is to be a Walpiri person.

Into which you are born?---Into which you are born and into which you will die.

Yes. We might try and finish this point and then we may have a break, it just depends on her Honour (inaudible) or just go through to the end. But I just want to get to the end of this CDEP. I cut you off before when you were talking about developments in 2015.

Sorry, your Honour.

THE CORONER: No, no. Just - - -

MR MCMAHON: So we've got five minutes on this point, then we'll have a finish – then we'll have a break, if that's convenient.

I cut you off talking about the development, the change in 2015 with the Abbott Government where there was a new regime called the – I think it's the CDP program?---Yes, it's terribly confusing because CDP just drops the employment out of the earlier acronym. But the model that comes in has nothing to do with community development per say.

THE CORONER: It's still called community development?---That's what it's called. It's called CDP Community Development Program. Now this is introduced in 2015 following a report to the government by Andrew Forrest called Creating Parity. Which interestingly acknowledged that people were better off, better off financially on CDEP, the previous program, but still recommended that it be ceased. C - - -

MR MCMAHON: Sorry to interrupt you, just because I'm conscious of I have to be domineering so we manage the time. Can you just focus on the punitive nature of the change - - - ?---Yep.

- - - and this idea of breaches, and the practical consequences for people?---Yes.

Including people who, you and I know, we've been talking to in recent days?---Yes, so very importantly CDEP only applies to remote living Aboriginal people. And

people are forced to work to receive their welfare payments, five hours a day, five days per week, or suffer cuts to those base welfare payments. They get breached, which is the technical term, for repeat non-compliance. Which might – might mean for any number of reasons, not turning up to work, on a particular day, or a number of days. And for that, they can receive a penalty of up to eight weeks in their – their welfare payments being cut.

So just to put that in a stark example, if – we're not really dealing with respect, with your doctor, we're not going to go into this whole question of the over-incarceration of Aboriginal people, that's (inaudible). Where you have over-incarceration, where you have for instance, young parents who might be locked up, and you've got grandparents looking after a significant number of children, who then fail to comply with some administrative requirement, those people who are getting on in age, and have great responsibilities, can be breached for some failure of administrative requirement, leading to many weeks of not receiving the payment?---Indeed, so I – I know of a 65-year-old Warlpiri woman who has just been breached in recent days, received an eight week penalty, and in fact, she should be on the old age pension, and receiving a higher payment, and not being subject to this kind of regime at all.

And one of the other witnesses on the brief - - -

THE CORONER: So why isn't she on the aged pension?---Well I can't answer that question, but I imagine it – it – it could be, under the terms of the government's way of thinking about it, her responsibility to turn up to Centrelink and fill out the relevant forms. It might be that we might think that the people who are administering – administering these things, given that they require a phone call from each of the people receiving – being administered in this way every fortnight, that they would be on top of questions such as when somebody should be taken across to an aged pension.

MR MCMAHON: In terms of dealing with Centrelink, one of the other experts on the brief, Dr (inaudible), she's actually written about the incredibly low value at the time, which white Australia gives to the time of people at Yuendumu. So they spend vast amounts of time on the phone, on hold, talking to – wanting to talk to Centrelink. You're familiar with that research?---I am, I am. So, Yasmin (inaudible), my colleague, she writes of the common – the most common music being heard at Yuendumu these days, as the hold music for the Centrelink line. And that's certainly – that's – that's right. It confirms my experience of spending time with people, and just the humiliating grind of constantly having to jump through administrative hoops, whether on the phone, or having to front up to an office and sit and wait for hours on end, simply to meet an administrative requirement in situations where it's clear that there will be no job. Okay, so people are just being governed in a holding pattern.

Just to finish on this point before the break, one of the most startling concepts which has come through in the evidence, is the reality and prevalence of hunger for most Australians – hunger is not something that needs to be confronted on a daily basis, even if – or a surprisingly large number of (inaudible) in some point. But hunger has emerged as an ongoing issue at Yuendumu, and indeed in Alice Springs.



Perhaps that's a diversion we won't go to, (inaudible) a lot of the younger people involved in crime in Alice Springs, hunger's one of the reasons that's attributed to that. But the example that you gave of the woman who's looking after – or that I gave and that you picked up, the woman looking after children, where she gets eight weeks breach, then hunger becomes a reality for the people who are in her care? ---Indeed.

The desperate need for getting enough food?---Well the pressure spreads to other people in the – in the extended family to – to help those people out. And I think it's also worth mentioning perhaps, that the latest Census tells us that the medium income at Yuendumu, is \$250. And we know that the cost of food in remote communities is 50 percent higher than what we pay in cities. So that's before you even come to the issue of breaching, and penalising people and removing a very modest welfare payment.

Your Honour, would now be a (inaudible) time for a break?

THE CORONER: Sure, we'll take a 15-minute break.

WITNESS WITHDREW

ADJOURNED

RESUMED

MELINDA HINKSON:

THE CORONER: Yes, Mr McMahon.

XN BY MR MCMAHON:

MR MCMAHON: Your Honour, I should just mention (inaudible) in order to make it – (inaudible).

THE CORONER: Okay, thank you.

MR MCMAHON: Doctor, I spoke to you about three matters which are related. I will suggest to you what they're related and take you through them. And one is public attitudes to people in remote communities. The second idea is media and media's attitudes in media. And the third idea is perhaps some brief comments on racism and structural racism. So one of the things that you've discussed at some length in your statement is the – at 78 and onwards – is the idea that there's been a shift in public attitude. Feel free to look at your statement but I (inaudible) we're talking about this shift in public attitude to remote living Aboriginal people which in your analysis, broadly shifted from being something positive to something negative. Are you able to talk about that and the importance of that and perhaps link that into media and the role of media in that shift? When I say the importance, it's the importance for us going forward and the recommendations that (inaudible)?---Policy never works on its own accord. It always requires, if you like, a wider set of cultural attitudes to go with it and legitimise it. You know, the – a wider held set of beliefs in the Australian community that can then look at that policy and say yes, that's fair, we agree with that, that makes good sense. And so one thing that the Northern Territory intervention did in the period leading up to the Northern Territory intervention was bring about a profound shift in attitude to remote living Aboriginal people. So in the earlier period, the period we were speaking about earlier, the period up to the mid-1990s, the attitude in wider Australia was that remote Aboriginal communities were places where language, culture, particularly culture, thriving art communities lived and were rightly supported in the terms of that relative separation of remoteness. What happens from 2006 on in particular, is a very profound shift in that attitude, from one that is positive to one that is very negative and that sees these places as being dysfunctional, that in the words of the Minister at the time, are awash with violence, with child sexual abuse, with grog, with domestic violence. And the way these attitudes are discussed at this level of public media, gives the sense that these are generalised situations across remote communities. Obviously the Little Children Sacred Report lays out very real situations that require attention. But the media attention to what was going on presents the idea of a generalised situation. And that then presents the legitimacy for the actual measures that are brought into play with the Northern Territory intervention.

For example, income management?---Indeed. The - - -

That's not – I'm not telling you, I'm asking you. Is that one of the examples?---Yes, so the – underscored by the idea that people in these places, because income management is all about remote communities, that people living out here are not able to look after their own money responsibly. Not able to feed their children responsibly. So income management is necessary.

In fact the income management policies that you refer to in your statement at par 77, canvasses the research which shows the – the policies to be largely incoherent?--- That's correct, yep, even the Department of Social Services itself, became critical of the program at a certain point.

So with that shift, you – I know you were in court the other day, when we had the benefit of hearing from Ms Liddle, who is perhaps the most senior Aboriginal – or one of the most senior Aboriginal public servants in the Northern Territory. And – just to correct me if I'm wrong, but were you here in court when she spoke about a great sense of systemic racism, and so on?---Yes I was.

So we won't revisit that. And there is other evidence on that. But the – you've spoken to me about W.H. Stanner and his thinking about racism. And how colonisation established a structure of relationships. Is that something you can just put into context of what we're doing here in this court, what we might call, structural violence, and how that was analysed by Stanner and how it is real to that?---Yeah, so Stanner described the early years of colonisation, as establishing a structure of relations that then threads through the Australian society, as a part of its anatomy, right to the present. So making that very compelling point, that colonisation is not something that ends, but that it then gets taken up through – well particularly, he's interested in Australian attitudes of the kind that I've just been talking about. The idea of structural violence, is a concept that scholars speak of to give both a wider and a more particular understanding of the way racism works. So we can talk about, in the case of Warlpiri, dispossession and exclusion from their lands. We can talk about legal exclusion from citizenship entitlements, and so on. And then we can talk about the specific new kinds of legislation, of the kind that we're discussing now, the Northern Territory Intervention laws. As having their own structurally violent elements to them as well. The other thing that I think is really important to acknowledge when we're talking about institutional racism, for example, and using that kind of language, is that institutions are made up of people. So the idea that we have some kind of abstract institutional racism, is actually made a lot more compelling when we recognise that it's universities, it's courts, it's police, it's hospitals, it's whoever, who inculcate in their employees, ways of working, we are, we are the carriers of those attitudes ourselves.

Might be worth introducing, at that point, the concept which I tried to develop with you at the beginning on the Coniston, and that period, but especially, Coniston, what it means today. Which is the ever-present threat of racism (inaudible) – ever present threat of violence. Is that a concept that you could just develop a bit?---Yes, very much so. So we were speaking earlier about the 1920's, and – and that's a period that historians Tim Rouse (?), has described as carrying an ever present threat of violence. Excuse me, I've got something delicious caught in my throat. And yet, all

interactions between Aboriginal and non-Aboriginal people in the 1920s, because of the volatilities that were around, carried this sense of an ever-present threat of violence. It's the way that he spoke. Warlpiri have experienced this, as a continuing thread, right up to the present. So in relation to Mount Doreen Station, for example, their ongoing exclusion from that particular station, despite what the *Land Rights Act* and the *Native Title Act* might say, includes this very real sense of fear. Fear is absolutely an integral part to the way in which structural violence, or racism, works. The systems of discrimination begin with a separation, an establishment of and us versus them, rather than seeing people in relation to each other. And as soon as you have that sense of separation, you have the very real prospects of fear governing relations between people.

Can I suggest to you that considering what you say about the importance of media and how that can impact, how Australian society sees people living in remote communities? And when we combine that with the policies of the intervention and since then, which as you point out, require some kind of public affirmation, so if – hypothesis is that the policies are very bad and harmful, but they're acceptable, more broadly, because there's a public acceptance of them outside of remote communities. That one of the things that then flows from that is a sense of weighing that it's your fault that we're in this position. Rather than stepping back and saying, well sorry about the decades of policy failure, grounded on a century of fear and violence and (inaudible). But rather than stepping back and looking at it (inaudible), there's a sense of blame?---That's right, so - - -

That you're response for your own terrible position?---I mean this – this inquest is looking at a very wide context around Kumanjaji Walker. And we know that as soon as you take a much smaller contextual view to anything, you are likely to see things in a different way. So the most damaging media reports that – that can be published, around Aboriginal life in general at the moment, are those that only focus on the – what you see on the surface level. Whether that be the media coverage of – of some of the unrest around Alice Springs at the moment. Or things that are being reported on, more generally, in remote communities.

I'm going to jump in and make an unusual comment. Nothing what I've been saying about the media should be taken as an inference of the journalists who have sat in this inquest, from the start to finish, and (inaudible). We've got a few more topics, and we'll just keep moving through them if we may, Doctor. The – we need to get your insights, if we can, on customary law. Which is – permeates much of what's been said in the inquest one way or another, either directly or under the surface. Could you just talk to us a bit about where customary law is sitting. Whether it's been undermined as a result of the – the sorts of events that you've described so far today. But firstly, perhaps, it would be useful, and I know you (inaudible) reluctance about this kind of question, because you wish to refer to Warlpiri Elders when talking about this, but we just have to deal with the reality that it's you in the witness box now, and I'm asking you the question. Now can you just explain about Warlpiri law and customary law, and how we can try to understand that in the context of the work that we do?---Certainly. So of course, yes, the first thing I will say is that I absolutely defer to the Warlpiri Elders on questions of customary lore, and my comments, any

comments I make, are not going to go to any of the specificities of how customary lore operates. But I think some very strong and important things can be grasped by understanding, firstly, that customary lore is a holistic system, that it's a holistic body of knowledge and moral authority that is established by the ancestors, that sits in the land and it establishes the workings of Warlpiri society. It establishes principles of land ownership. It establishes relationships between people. It establishes responsibilities, appropriate modes of conduct, honourable conduct. It names transgression. It gives ways to dealing with any of the issues that come up in a human society. So, in making those comments, what I have in mind is one of the things that has happened in this period of a shift from a very positive public attitude to remote Aboriginal culture to a negative one, is that there's been that incredible shrinking of context that I was speaking about before. So that rather than understanding and being open to customary lore as an honourable system, there is a tendency to focus on just a very specific form of physical punishment as if that can be said to stand for customary lore, which of course it cannot.

One of the concepts that you spoke about which surprised me and I think it would be interesting to record this notion of, when you were talking about owners and managers – and I'll ask you to say the Warlpiri words for that, but you also introduced the idea of police. Could you just explain that idea that we previously discussed?---Yeah, so Warlpiri lore operates by virtue of the kinship structure, and what Warlpiri – I won't go into the detail of it too much, but in essence, I think what's really important to understand is that, in any ceremonial context or context of dispute resolution or where anything significant needs to happen, Warlpiri society cleaves in two. It cleaves into patrimoieties, all matrimoieties or generational moieties that establish a reciprocal relationship and responsibility between the two halves of the community. And in relation to the workings of patrimoieties, which is the father/son relationship, and these are the moieties through which land ownership travels. We have the Kirda, we have the owners and we have the Kurdungurlu, the managers, who themselves are sometimes, yes, described as policemen in Aboriginal English, in Warlpiri English. So what does that mean, "policeman", it sounds perhaps rather surprising terminology to use in this place. But it indicates that the policeman is responsible for making sure the ceremony that's being enacted is enacted in a proper way. So it's a form of responsibility that, again, is grounded in these relationships, and there's constant back and forth between the two sides, whether on the ceremony ground or in relation to sorting out some kind of dispute to ensure that everybody who needs to be consulted, everybody whose perspective needs to be in the mix, is there and everybody agrees at the end that the business has been sorted out "proper way" to use the Warlpiri term.

Building to that is – into that dialogue is that acceptance of responsibility, isn't it?  
---Absolutely, responsibility by the defendant or by the person who's regarded as a perpetrator. And not only that person, and this is this really important difference between a society that privileges the individual, it's the individual at the centre of the world versus one, but it's structured via kinship. It's not just the perpetrator that must be responsible, it is that person's family. So when a dispute is resolved, it's resolved with the agreement of everybody on both sides.

Just to finish on that point, in terms of solving disputes, and I'm not going to take to the areas, but there have been disputes in the background of this case that have been occupying the minds of us all. But in terms of solving disputes between groups of people, for instance, critical to that is having a process for where those customary lore practices and people from within the community are central to the resolution of a dispute, as opposed to bringing in people who are not - -?---Yes, that's absolutely right. So again, coming out of these changes associated with the intervention legislation, there was – in the period of the 1990s, there was a greater deal of respect for the operation of customary lore, as her Honour will know much more than me from your own experiences, I'm sure. But in the subsequent period, there was a great deal of intervention by police and other authorities to stop Warlpiri and other remote Aboriginal people sorting their own problems out. In the case that you're referring to, external mediators were brought in, in one period and all that did was prolong unresolved problems, rather than give people a way of dealing in that form of related responsibility I was referring to.

Just the final point on customary lore which I think - - -

THE CORONER: Can I ask a question?

How does that work? It's – the person who is the cause of difficulty and unrest is sitting outside that system?---Do you mean if they're elsewhere or you mean they're not of that community?

Not of that community?---Well, Warlpiri have always, you know, for a very long time, expected both laws to come into play in some kind of dynamic, that's for sure. So if you're asking, having I ever heard of a case where a non-Warlpiri person has been involved in customary dispute resolution, no, I'm not. But the fact that I'm – I don't have an example doesn't mean it hasn't happened.

MR MCMAHON: Your Honour notes points that we've discussed in terms of working out what is fair, when you're talking about – not in this court, but talking to us about concepts about the proper way and what is fair. You've spoken about the flexibility of Warlpiri lore and the capacity to be flexible. Can you just give us an understanding of that contrast, in the sense that old lore, the lore is rigid and can't accommodate new ideas and changing circumstances?---No. So when consulting with everybody who was regarding as relevant to something that has occurred is one significant part of that to ensure that any relevant contextualising information is taken into account, and that can involve quite a bit of back and forth. But if we look at the longer period of history, I guess the point to make is that elements of customary lore have changed over time in relation to changing social expectations and needs and aspirations of a changing Warlpiri society as well. So for example, if marriages used to be organised along kinship lines in very particular ways, they no longer are. People are allowed to make their own matches. That's one kind of example.

This notion of flexibility and adjustment is sort of part of the living reality in terms of community engaging its own customary law?---Its own customary law and with the wider society as well.

Just before we – well we'll leave customary law. In your statement, if I might just take you to par 87. There's part of – you referred to this earlier and I just want to give an example just for the record. We spoke earlier about some of the consequences of the intervention were changing in policing. And in that statement at 87 you just give the example of a huge increase in certain kinds of fines. Could you just talk a little bit about that. Perhaps if I can direct you to par 87 and 91 just so you can explain those to the court?---Yeah, sure. So I mean I was aware personally of this extraordinary, I don't want to use the word eruption, but let me just say a very intensive focus on driving related fines that were being administered by police between 2006 and 2010. That has subsequently been documented by academics Thalia Anthony and Harry Blagg who did quite a lot of work at Yuendumu and Lajamanu documenting the increase of – 50 percent increase in driver offences at Yuendumu in periods 2002 to 2006 and 2006 to 2010. And an increase of 250 percent of driving criminalisation in the Northern Territory more generally during that period. Now slightly more anecdotally I was aware of a number of young people who went to prison during this period. And when I would ask why they were in prison their relatives would say for not wearing a seatbelt. So there was this perception among the Walpiri community that that was, if you like, now a thing that you would go to gaol for these sorts of low level crimes.

Well it is a reality in the Northern Territory that there are large number of people in prison for driving (inaudible), the research shows that?---Yes.

THE CORONER: You do have to drill down on the offences though, Mr McMahon.

MR MCMAHON: I'll pull out of that, your Honour, I don't want to get distracted on that.

THE CORONER: I don't know the figures but I do think it's very important to distinguish from the driving offences that are being referred to in this statement and the likely kinds of driving offences that might result in imprisonment?---Most of these offences that I'm referring to were people driving around the township.

Sure. And there are mandatory disqualification periods which have flow on effects. There are mandatory fines for various offences which have flow on effects?---That's right.

But anecdotally, usually those driving offences that are being discussed here, in fact don't result in someone going to gaol. But that's not to say that there isn't someone in gaol who has those kinds of matters.

MR MCMAHON: No, thank you, your Honour. No, I don't want to lead the witness into roads we don't need to go down.

THE CORONER: Sure.

MR MCMAHON: But perhaps the underlying point that I was seeking to draw upon is – and you may not be able to comment on this, but if you can based on your research or reading other research – what effect that kind of hyper policing on driving related offences had on relationships between the community and the police at Yuendumu?

THE CORONER: The other thing I think that's important – and I'm interrupting and I'm sorry – is the perception. Because – which shows the lack of engagement between, you know, the court processes and the broader community. Someone might say they're going to court for not wearing a seatbelt and end up in gaol and the community don't know the full story or what has actually happened in the court room and obviously community courts might be a way of promoting better engagement, so there is in fact better understanding.

MR MCMAHON: We're down the track we will be referring your Honour back to the 1974 report on that very (inaudible).

THE CORONER: But I cut across you there. I just – it was just that interesting point about perception.

MR MCMAHON: In your statement you've given some examples of what I've said is hyper policing, it's not what you've said?---No.

That the huge increase in statistics from the intervention onwards over the next four or five years or more. Are you able to develop what her Honour said in terms of perception and relationships between community and police?---Yeah. Look, I must make clear that I was not living at Yuendumu at that period, I was making short interim visits from time to time. So anything that I have to say is curtailed in that way, although my conversations with people continue remotely. I was aware of a lot of people I know going to prison through that period. People who you would not normally expect to go to prison and they were going to prison for seemingly very minor things. I also detail in my statement one particular incident that was very disturbing through that period that goes to perhaps a sense of attitude or sentiment in relations between local people and police, which is a car being pulled over, a couple out collecting firewood.

This is outside of Yuendumu?---It was on the road between Yuendumu and Nyirripi. The car is pulled over. The car is searched, a check is done on the driver's licence of the driver who was the husband of this couple. It's discovered that he's driving with a discredited licence, disqualified licence. He's arrested on the spot, perhaps for some other warrants I'm not aware of. And his wife is told that she may not drive the car if she is without a licence and the police car drives off at nightfall with her left to find her way back home some kilometres along the road.

Well that story speaks for itself and I won't go any further with that. I want to take you now to our last few topics, if I may. Firstly, a concept which has come up a



number of times and which you may be able to assist in is the concept of intergenerational trauma. Now that's been discussed in court at various times, possibly without a lot of explanation. Is that something that you're able to assist the court on, explaining what it is, what are the factors that create or that lead to intergenerational trauma, what it means?---Yes. I think it has to be understood as a constellation of things and the historical carries right through to the present in the way I've been describing. So first of all, you have people carrying the burden of their historical experience, of dispossession, of that treatment of brutality that I described earlier, of exclusion and very much the first-hand experience of humiliation, which I associate with the way Centrelink works in the present day, for example, as well as some of these wider attitudes that circulate and people meet on the street. They meet the sedimented expectations of the person looking at them. Intergenerational trauma has to include the impacts of premature deaths which are occurring all the time in Walpiri communities. The constancy of funeral attendances is again something that my colleague, Yasmin Musharbash has written quite a lot about. Relatedly the chronic illness of very close relatives. Hunger and economic poverty. The separation from parents, as a result of incarceration, or because those parents are in town drinking perhaps, and those parents are probably in town drinking because they're dealing with their own grief, in the sense of trauma.

Can we just talk about grief a bit more?---Grief is ever present. It's an ever-present element of daily life. Because of this constancy of premature deaths, in particular. And the separation from family.

We've heard a lot about funerals in this inquest. When I say – what – it's – you may be aware, and I don't want you to get caught up on the facts of the (inaudible) case, but there was a funeral going on at the time of the shooting. And a person who has spent decades working with Aboriginal people, once explained to me, how it was going to take me a long time to understand grief, in the terms of Aboriginal culture. And how important it was to, for people like me, to – to try to understand it and to see the impact it had on daily life, and life generally. Is that something you can just explain a bit more and develop for the court?---I think it's a conjuncture of the cultural and the historical. So grief – the way people deal with grief, is – is through the assembly of the community to grieve together. The assembly of extended – extended relations. So there are both positive and very, very sad elements to that. And we're familiar with some of that from our own ways of doing funerals. Which is that those who are left behind, come together and reaffirm their care and love for each other and that they will go on, and so on. But, if grief is – if the deaths keep coming, that's – that's very, very difficult. And, as well as premature deaths, when you're losing old people, at a time when the demographics of Warlpiri society, like other Aboriginal societies show a real shrinkage of the oldest population, and the – and a very, very rapid growth of – of young people. And again, I think my colleague, Yasmin Musharbash has a very helpful demographic diagram in her report that – that spells this out. You have all sorts of things going on. So yes, you have the emotional impact of grief, but you also have these very profound social impacts. Because you're not just losing Elders, you're losing the – the number of Elders versus, you know, in relation to the larger number of young people.

Just for the record, for future reference, I don't know the – where it is sitting in the brief, but there's (inaudible) referring to the report of Dr Musharbash, which includes a chart, which on page 7 of her statement, shows the distribution of age through the Warlpiri Community – I think it's the Yuendumu Community, actually, where there's a surprisingly small number of people that we might describe as middle aged, who are caring for both the older and the younger, compared to the rest of Australian society. And she develops the point that that puts so much pressure on people who we in this court might call Elders, or emerging Elders, put so much pressure on their lives (inaudible) for many reasons, but including just the actual number of people being asked to do so many things?---That's right. Care for their own family, and help make the community work, in all sorts of ways.

So even something which we might say simply as asking the Elders to be more involved in this or that, we need to recognise that many of those people are already overwhelmed with the number of things that they're already called upon to do, in what – compared to the rest of Australian society, is statistically (inaudible)?---That's correct.

Now, I think we're nearly finished. So I'm going to just take you now to, if I may, what you and I discussed as some of the positive signs, and some of the recommendations that we're going to be giving ideas about. And I happened to get an email today. I'm just going to hold this up, so you can – people can see that I went to the Kangaroo Book Shop in Alice Springs, and bought the Warlpiri Encyclopaedic Dictionary which is a giant enterprise. It's 1400 pages. And it's a great scholarly work, and by strange coincidence, it's being launched today. So it seems fitting to refer to it. But it's also something of great importance, and you're well positioned to just explain that. Could you just – so we're going to ask – I'm going to ask you some questions about looking to the future, and recommendations. Because, as you know, what we're saying from Parumpara Committee perspective, is that there is a whole mosaic of ideas which need to be addressed in order to prevent the sort of shooting which took place, and to prevent the sequence of steps and relationships which led to that disaster. And countering that, ideas of recognising the strength of culture and Elders, and leaders, and we have been saying through the inquest, shifting the opportunity to exercise leadership in the community, back to where some of the others you've spoken about from the 1990s. So in that context, can you just tell us a bit about what the encyclopaedia, which has just been released today, can signal?---Yeah, I'm very much aware that my evidence paints a very, very grim picture, and it's incredibly important to recognise that despite everything that Warlpiri people are coping with at the moment, all sorts of really positive things continue. And that dictionary, just by virtue of the thickness of it, I mean, look at it, it's a brick. It is testament to an incredibly vibrant language community, that has extraordinary cultural depth at its heart. And so the dictionary itself is the work of decades of Warlpiri linguists, non-Aboriginal linguists, working together, from the 1980's, right up to the present, to put it together. You'll – it will occupy you for a very long time.

And as fate would have it, it gets launched on the day you give evidence?---Mm mm.

But a couple of points, I just want to – we’re going to wrap it up over the next five minutes doctor. So I just want to steer you to a couple of points if I may. We – elsewhere in the inquest, we’ve had some evidence about unemployment, and the unemployment figures are dreadful. Can you – and although I haven’t really taken you to explicitly, it’s within your statement, to some extent, the work opportunities under the CDEP Program were generally regarded with – were not that well received by the community at Yuendumu. I don’t want you to swear unnecessarily in court, but the word “bullshit jobs” was – is an expression that you’re familiar with isn’t it? ---It is.

Now, contrasting that with recommendations that need to be made, can you talk about some of the big picture opportunities that can – can be given life in – in the Warlpiri Community. And I’m steering you now to projects like Mount Doreen, as an example, which has sort of slipped through stations and biodiversity and so on, we’ve spoken about that before?---I think there are two important points to make. One is that one of the things that’s gone on in this shift over time, the last 25 years, is a tendency towards outsourcing. So it’s not simply that Warlpiri people have lost control of the main organisations, and the council in their community. It’s that at the same time, a lot of work that Warlpiri might once have done, has been outsourced. So the jobs are just not there in that regard. But, to come back to the more positive direction that you’re quite rightly directing me towards, there – there is really important work going on on the southern Tanami indigenous protected area. Large swathe of the bottom half of the Tanami Desert, Walpiri rangers doing all sorts of biodiversity work and land management work. And similarly on a station, the New Haven Station that was handed over to a wildlife sanctuary, perhaps – I don’t have the date in my head, but a decade or more ago now – and they are doing work that is recognised globally. And they can only do it with the participation of some extraordinarily committed and knowledgeable senior and younger Walpiri people. So that’s one kind of (inaudible) of activity.

At the start of the evidence you gave you talked about the station?---Mount Doreen.

And then how it surrounds the most important sacred water sites for Walpiri people. That was in the same family from 1926 until last year, is that correct?---That’s correct.

And it’s beyond the scope of your evidence to analyse that sale. But as I understand it, that land nearly came into the hands of the Walpiri people a couple of decades ago?---There was as a moment just before the closing of the Sunset Clause in the *Aboriginal Lands Right Act* (1997) where an application to use funds that I think were being drawn from the Aboriginal Trust Account, the ABTA, to put up a proposal to buy that property. The then Minister for Lands, Northern Territory Minister for Lands did not support the sale, so it didn’t go ahead.

It seems obvious but I suppose it should be you giving evidence, not me commenting that. Given what you said about the importance of a water area and the property – and the land generally, it would be a great step if that property could actually be

transferred to the Walpiri people?---I think there's an argument for suggesting that would be an appropriate act of ethical redemption.

That would operate at a cultural and spiritual level but also as an economic way forward as well?---Indeed.

I'll just put a couple of propositions to you and then we'll finish. Well perhaps before we do that, just housing. We have discussed housing a lot out of court and I think it's important to talk about housing in court. Dr Phillamy (?) has given some evidence about the – a lot of housing that he has seen and this would include parts of Yuendumu. Basically not really fit for families. Can you just talk about how housing is a – it's not the solution to every problem but it's the prerequisite to solving many problems that relate to education, health, domestic violence. Can you just explain that whole concept to the court?---Well housing is certainly a basic and integral of any kind of response to that conjunction of issues. And we know that in Australia there's a very long and complicated saga in relation to the funding of remote housing in particular, with very, very chronic shortfalls historically detailed by people who have looked very closely at that work.

But a long period of underfunding?---Very long period of underfunding.

I know you're familiar with the research of Michael Billum (?), who's a policy analyst in housing?---That's correct.

Now in his work he's mentioned that 61 percent of Northern Territory Aboriginals live in overcrowded houses?---That's correct.

And that of those 50 percent of those people are under 25 years old?---Yes.

And he makes the point that when you've got that many young people living in over crowding, that they are going to suffer lifelong consequences in both opportunity and in health?---That's correct.

Now it's probably beyond the scope of – in terms of time, it's beyond our time, we've reached the end of that time. But in terms of addressing the kind of constellation of issues which lead to many – troubles that have been identified in this inquest, would you agree that to get a significant improvement, a measurable real improvement in things like health and children going to school and other very significant social issues, that decent housing is a prerequisite, an essential part of dealing and solving those problems?---Yes, I do.

Perhaps finally to end my positive note for our friends sitting outside, throughout this entire inquest there's been Elders from Yuendumu sitting on the lawn outside and you made a comment to me about how you saw that (inaudible) talk about, it but perhaps I'll finish there and make that comment?---Yeah. I think it's apparent to everybody who's coming into this court that Walpiri have made an extraordinary commitment to this process that they've indicated by their presence on those lawns day after day over the many months that you've now been sitting. That the outcome

of this process really matters. And they see the future of their children as being caught up in it.

If your Honour pleases.

THE CORONER: Thank you.

Are there any other questions? Mr Mullins.

MR MULLINS: Thank you, your Honour.

XXN BY MR MULLINS:

MR MULLINS: Dr Hinkson, my name is Mullins. I appear on behalf of the Brown family. A couple of questions they have for you. Firstly, you've spoken about the link between the intervention and you've also spoken about the high incarceration rate. Do you see any parallels between a link between the intervention and the high incarceration rate and events from the Braitling area. And you've suggested slavery there?---An argument can certainly be drawn out, a parallel can be drawn out in relation to slavery like conditions of that period and the present. Certainly some scholars are writing in that language and certainly some Aboriginal people themselves and Walpiri people themselves describe the experience of being on CDP – that's CDP, not CDEP – as having that characteristic.

Do you see a connection between the intervention and the high incarceration rate?  
---Yes, I do.

And can you expand on that briefly please?---I think probably one thing that my statement details is a sense of this generalised criminalisation of Aboriginal people living in remote communities. And a creeping kind of criminalisation. Criminalisation for things that perhaps were not criminalised prior to that. But the one – little bit that I would say in response to your question though is I think we probably need to widen the scope beyond the intervention itself. So you can start from actually 1997 with the new kinds of mandatory sentencing laws that were brought in then and march through from there over a longer period.

And what impact does that have on the familial structures in the Walpiri community and Walpiri culture in general?---Yeah, well that's quite devastating, as I indicated before in terms of the separating of parents from children and then the extended pressure that goes onto extended family budgets of a very meagre kind to feed those mouths, those additional mouths, to make sure that people are cared for adequately, that they're going to school, if they're going to school and so on and so forth.

And does that of course have a flow on effect to the health of the community as a whole?---Yes, I think so. It certainly has a flow on effect at the level of morale and demeanour in the community. If you're using health in the very specific terms, in terms of bodily health, probably. But I've not documented that.

From your experience, does the undermining of the authority of the elders in matters of choice and control of economic associated matters, does that have an impact on the familial relationships, in particular the capacity of the elders to disciple the younger people?---Yes, very much. I mean, I think children have grown up with a sense of their – well, now children who are 15 or more if we just look at the intervention period, of their parents and their grandparents being profoundly disempowered in the eyes of the wider society, and including in the workings of their own community infrastructure, and children absorb all of that.

And if there was a move to try to arrest that change and to implement, for example, a self-determination program that you've described that was implemented in the 1970s through to the mid-1990s, would we expect that change to happen immediately or would you expect that to happen over a generation or more?---It would take a very long time to undo the damage that has been done in this period.

Thank you, your Honour.

XXN BY MR MURPHY:

MR MURPHY: Dr Hinkson, my name is Murphy and I'm the one of the lawyers representing NAAJA, the Australian Aboriginal Justice Agency and I just have a few questions. One is the, what seems to be central concepts in the evidence provided in this inquest, is this concept of Warlpiri authority. Now, I was wondering if you – I appreciate you've gone to some lengths to try and explain, but if you were able to sort of capture it in a short description of what is Warlpiri authority and why is it so important?---It's recognising that those underlying relationships that organise Warlpiri society take precedence. Is that too abstract?

I found that very helpful, because obviously you've addressed in much more detailed in your statement, but if we can use that precedence of those underlying relationships as sort of a nutshell description?---May I add one thing - - -

Of course?--- - - - which I think is very important which is that Warlpiri society is of course – the term is a “gerontocratic society”, so authority is acquired with age over time as people are recognised as having reached an appropriate stage to be granted responsibility in their customary legal terms. So it will always be the oldest people who carry the most authority in that system.

Could I ask you to speak to the importance of Warlpiri authority, not in the concept of why it might be morally important for a society to acknowledge Warlpiri authority, but more in other context and just practically how recognition of Warlpiri authority can result in positive outcomes, if that's your evidence?---Indeed. So may I go back to the 1990s to reply, because this is the easiest time to say, well we had a whole series of places in which community activity was going on and that authority was being invested. So in the institution of the council, the Community Governance Council, in the setting of community meetings where large numbers of people would congregate and each have their turn to have a say on whatever dispute was being discussed; very public, very visible. In the congregations that would often be held in

association with sports' weekends when you have larger groups of people coming together which has huge ceremonial significance as well as football competition significance and so on. So this is now Warlpiri Elders in communication with Elders from Pitjantjatjara lands and so on and so forth, so that mobilises a regional structure of authority, and I could go on.

And certainly, I know you've detailed the night patrol and various other things - - -?  
---Indeed.

- - - in your statement and I will turn to that in just a minute. So that's Warlpiri authority and how, when it's empowered and operating well in the community, enables the community to operate well. As I understand, the converse is, on your evidence, that erosion or I think you used the word "dismantling" of Warlpiri authority can have negative practical consequences for the community. Is that right?---That's correct.

And in terms you've provided many examples in your statement of policies that have eroded Warlpiri authority, is it right to say that in a general categorisation sense, they are policies that externally impose governance and impose external decisions onto the Warlpiri community?---Yes, very much so. So Warlpiri people, given the sense that it is no longer viable, of if you like in your terms, legal, for them to be able to administer their customary lore.

And is some of the examples of this externally imposed governance, there's ideas of mutual obligation that came through in the nineties of the intervention and stronger futures?---Yes.

Looking forward and perhaps optimistically - - -

THE CORONER: Hopefully.

MR MURPHY: I would just ask the court staff to play onto the screen 20-069 and, Doctor Hinkson, this is a document that's a Northern Territory Government local decision-making framework policy that's in evidence in this inquest, and this is the fifth page.

I would just ask the court staff to scroll down slightly.

And it includes a quote for the former Chief Mr Gunner from the Jabiru statement, and it refers to – perhaps I'll give you a moment to read that document, Dr Hinkson, and the question will be, in light of your experience and expertise, whether this presents the hope of the power of Warlpiri authority, as suggested, if necessary?  
---It's a very hopeful document.

And is that – obviously it's not in as much of the nuance that you've been able to present in your written evidence and oral evidence today, but is there some sort of harmony there between five years of allowing space for Warlpiri authority and the language that they've used there which is not taking power, but returning power?

---Yeah, indeed. I will watch with great interest to see what they actually do.

You won't be the only one. Just to finish then, in terms of practical examples, drawing upon some of the past examples you've – things that are in your mind could really return power or enable Warlpiri authority, community control over law and justice issues?---Indeed.

Such as, an example that you've already given, Mount Theo, which started this response to substance abuse issues. Is that right?---Yes, yep.

Continued operation and local decision-making around night patrol. Would that be another?---Yes.

And the final one, you haven't mentioned in your evidence, but are you aware of the law and justice groups in existence, Territory communities including in Lajamanu? ---Yes, I am.

Would that occur to you, would that be another example of Warlpiri authority?---Yes, yeah, potentially. And I guess that the one comment I would make is that it has to be holistic if it's to work. So technically picking policy areas and saying, we will do this here and this there, is not going to bring about the kind of profound change that is required. It needs – in the way that we went through these moments of discreet policy-making that had an ethos attached to them, that's what is required now.

And so, just one example of that might be, you can't just do an in justice, you have to do it in housing as well. Is that what you're saying?---That's right. But you would start with community governance as itself a holistic thing.

Okay.

Those are the questions.

THE CORONER: Thank you. Any other questions? Dr Dwyer.

DR DWYER: Just briefly.

XXN BY DR DWYER:

DR DWYER: Dr Hinkson, I don't want to detract from the profound evidence you've given about the deterioration of policy and Warlpiri governance, but I just wanted to zero in on one example of an economic project that is referred to by WEH Stanner and Dr Kerns. And they are – well there's a number of them, market garden. There's reference to a piggery?---Yes.

And there are photographs in the document of 1974 of Aboriginal people – Warlpiri people working on housing construction. On our visit to Yuendumu, we didn't see evidence of a market garden or a piggery or other enterprise they were making there. Do you know why those particular examples of the piggery and the garden,



for example, haven't sustained?---Yeah, so – so the piggery and the market gardens were artefacts of the assimilation period. The – the piggery is still there, as a ruin, about 5 kilometres out of town. And the market garden – well both of those activities, they were – yeah, the ethos of work, under that period, was of a very particular kind. People obviously chose not to continue with them, in the subsequent period. The other reason why market gardens are not viable at Yuendumu at the moment of course is the complete and very serious lack of water. So while a community like Ali Curung is – is doing fantastic work in horticultural production, and have doubled their employment rates in the last census period, as a result of that activity, the same kind of thing cannot be tried at a place like Yuendumu, because there's just not the water to enable it.

So meaningful work projects involve looking back historically at the - and what's happened to them, involves looking back, historically, and holistically, at the removal of culture, authority and opportunity for Aboriginal people?---Indeed, although that's not to say that there aren't all sorts of - - -

Yes?---Other opportunities emerging now in the Indigenous land that the sort of working biodiversity, and land management, and the Indigenous protected area opportunities, are very strong opportunities. But then there are more basic questions that are really there for the Warlpiri Community themselves to determine around what kind of work is possible in those places. What kind of efforts people want to make in supporting young people in very particular forms of work. There – these are very tricky questions.

Thank you, Doctor.

THE CORONER: Well, thank you so much for providing so much of your time to provide us with an opportunity to have a deeper understanding in a way that we can all engage with in a very considered way. And we do appreciate the contribution that you have brought to the inquest proceedings?---Thank you very much.

WITNESS WITHDREW

THE CORONER: We'll adjourn for lunch.

ADJOURNED

RESUMED

BRUCE PORTER:

THE CORONER: Dr Freckelton.

XXN BY DR FRECKELTON:

DR FRECKELTON: Your Honour, you will see a witness who occupied that spot a few days ago.

THE CORONER: Yes.

DR FRECKELTON: Your Honour asked for some information and we undertook to provide it to you, about body worn video. I wonder if I might ask this witness a handful of questions about that and also a matter raised by Mr McDevitt yesterday and that will enable others to take matters up they deem appropriate.

THE CORONER: Sure.

DR FRECKELTON: (inaudible).

THE CORONER: Sure.

DR FRECKELTON: We have a copy of the document for your Honour.

Assistant Commissioner, you're still under the obligation to tell the truth?---Yes.

Now have you caused to be generated a document which identifies the numbers of cases which have arisen as part of the complaints and internal investigation processes in relation to compliance with body worn videos?---Yes, I did, your Honour.

And is that the document you have in front of you at the moment?---Yes, it is.

As best you know are the figures in that document accurate?---Yes, as best I know as they were taken off IPRO, our data management – PSC data management base or case management base by our IPRO administrator.

Thank you.

I formally tender that, your Honour.

THE CORONER: Thank you. That will receive another - - -

DR DWYER: Exhibit 24, your Honour.

EHIXIBT 24 Document.

DR FRECKELTON: Thank you.

Now could you interpret that a bit further. You said it came off the IPRO data base. Can you just take us through, not all of the entries, but the relevant ones, particularly in the left hand column and then explain the trends that you can see in the right hand column?---Excuse me, your Honour. Yes, I can. So just to start off with the body worn video come in, you know, as a trial in 2014 and then it rolled out then in September 2016. When we look at these figures you have to take into account also that when it first rolled out we only had, I think it was, 600 cameras that were issued out to members because of obviously finances. And over the years it has rolled out. So currently at the moment we've just got over 1200 cameras.

Now you've got a heading, "Total incidents" for the various years. Can you explain that to her Honour please?---Yep. So the total incidents are the total number of complaints or internal investigations or even investigations such as custody incidents that we examine.

Right. So that starts – we commence so when Constable Rolfe started his work in the police force in 2017. So the figure there of total incidences, 554 and then it's risen for a number of years and of course there's a small number for the only partially completed 2022-2023 year?---Yes, that's correct.

So you've got a heading under that, "BWV issued". What does that mean?---So that means that the police officer that has been identified during the complaint or the internal investigation has actually been issued with a body worn video camera.

Now is the – is the most relevant category to look at BWV issued activated incomplete, or not – and also BWV issued, not activated, especially in front line? ---Yep, so the one off primary note is the BWV issue not activated front line.

Yes?---Of course all front line officers have been issued with body-worn video. Because that's the predominance – predominance of our police activity with the public. And as you can see there, other the years, like even last year, our non-activation for front line was down to 38, which was a fairly improved compliance, you could say, from previous years. And that is also a result that when we were really educating and sending out messaging, and starting to do disciplinary actions against members in relation to non-compliance.

You've got a categories two, for technical issue, what does that mean?---So technical issue is if there's been a glitch with the device, from a technical aspect. So some technical aspect has stopped it recording, or it won't function. Primarily that's what it's about.

All right?---Something to do with the hardware of the device itself.

Now there was an interaction by text message, between Constable Rolfe and another officer, about effectively turning away, so that the body-worn camera did not

capture a particular kind of behaviour that the officer didn't want seen on video. Has that been an issue so far as you're aware, in relation to the misuse of body-worn cameras?---No, not – not that I've seen. Because every category one or category two investigation, comes through my office as a delegate of the Commissioner to sign off on. So I review, those investigation reports and the letters to the complainants. But before I do that, I also review the body-worn video of those investigations, and I have not seen – I can't recall ever actually seeing that occur.

You've got another heading on here, in the first section of total incidents, Body-worn Video Not Relevant, and that's to off duty and on duty?---Yes, that's correct.

And what are those things about do you know?---So when we say not relevant, is when we get a complaint, say for example, within the watch house.

Yes?---You might get a complaint of a member using excessive force in the watch house, but you have like witnesses, as in your watch house keeper, or your watch house observer. They get listed on the job as a witness. And they also get recorded whether they have body-worn or not. So it's not relevant in that instance because they don't have the body-worn. So it's those types of incidents.

So when should a member activate their body-worn camera?---Whenever they know that they're going to be using a police power.

Now does that answer the issues that your Honour (inaudible) has?

THE CORONER: You're testing my memory there.

But what I understand from this is of – and my maths can be wrong, and I didn't have access to a calculator, of the 391 total incidents that you considered, in the last six or seven months - - - ?---On the - - -

- - - from July 2022 to March?---Yes, so eight months, your Honour.

Eight months?---Yep.

There were 391 incidents examined, 264 absolutely no issue that you could identify. And a number of other issues identified by those smaller numbers. So in about 20 percent of the matters that you examined, there were – there was an issue identified with the body-worn video?---Yeah, of – of some type.

Yes.

DR FRECKLETON: And are those being followed up, utilising the subject matter expert in the college?---Yes, if it's in relation to use of force.

Yes?---But every time it is flagged when we do – or the investigation comes from Professional Standards, to even categorise with the Ombudsman's Office, so

whenever it's identified as an issue body-worn, it is critically examined, every single time.

THE CORONER: And there were 34 occasions when it wasn't activated, and another 23 occasions when it wasn't worn?---I'm sorry your Honour?

I'm looking here, just on – I'm adding up - - - ?---Oh sorry.

- - - things. You've got "Front line not activated." "Specialist not activated." So that's 34 occasions when it wasn't activated in the last eight months by various people?  
---Yes that is correct, your Honour.

And then you've got another category there where it wasn't worn, and that adds up to 23 incidents?---Yes, that's correct, your Honour. And those that aren't worn, is generally those occasions when we've examined it is when they've gone back to the station to put it in charge because the battery's flat, and then they've been called out again, and they haven't - - -

Okay?---Had an opportunity to then, because it's still charging.

DR FRECKLETON: Does the – yes, so the batteries last four you said, four hours, give or take?---Give or take. For an eight-hour shift, we know that for – if you activate it for an entire eight hour shift, it will always run out of battery power.

Thank you. I'd just like to raise one extra issue with you, arising out of evidence given by Mr McDevitt yesterday. I think you watched the evidence given by Mr McDevitt, is that right?---Yes, parts of it, yes.

All right. Are you aware that he expressed some views towards the end of his evidence about the reintegration of TRG personnel at the expiration of their period of service, onto front line policing?---Yes, no I'm aware he discussed that, yes.

Mr Porter I'm just being reminded - - - ?---No I don't think - - -

- - - (inaudible) - - - ?---It wasn't Mr McDevitt - - -

- - - Professor McCulloch?---Professor McCulloch, yes.

THE CORONER: Yes.

MR FRECKLETON: My apology. And you're aware of that issue?---Yes I am.

Did you spend time in the TRG yourself?---Yes I did, seven years.

And at – how long do people generally spend in the TRG, Assistant Commissioner?  
---It varies depending on person's pre-aspirations.

Yes?---Because once you're in TRG it limits your career progression. But on – I don't know what the average is. Some people could stay there long time, up to ten to 15 years, depending on their role within the TRG. But I found, on average, it was around the four to five years that most people would stay there, then progress on, elsewhere.

Now is there an effect, so far as you are concerned, and on the basis of your experience, not just in the TRG, but also in Professional Standards Command, looking at inappropriate uses of force, from a period of service in the TRG, however long it is, to a person's conduct when they leave their and resume front line policing responsibilities?---No I did not see any effect at all. Especially – so when you're a TRG officer, you do get higher level training in relation to risk assessment, situational awareness, planning, also even in relation to briefing. So you have a higher level of expertise, for a better term, so when you are out in the field, you are assessing situations a lot more intensely and with much more focus. Also within TRG, is a specialist component which has been highlighted, as in that's the tactical option, is that's only one part of the Territory Response Group. As most of the duties – a lot of the duties with Territory Response Group is actually out, providing general support to areas. I spent many times out in the communities in general support. So you were still doing policing duties. And also with the TRG you still undertake the – the mandatory annual requalification's, the same as every other member of the police force as well.

So would you agree with Professor McCulloch that people should be precluded from resuming front line duties, or required to undergo some process of re-education, or retraining before they do so?---No I do not agree.

Thank you.

THE CORONER: Yes, other questions. I can't (inaudible) - - -

DR DWYER: We were just finishing Mr Murphy at the end of the 6th, your Honour, so (inaudible).

XXN BY MR HEARN:

MR HEARN: Assistant Commissioner, my name's Hernan, I represent the Walker family, the Lane family and the Robertson family. First I've got some questions about the failed prosecutions policy that you gave some evidence about on 6 March?---Sorry, the Failed Prosecution Review Panel.

Failed Prosecution Review Panel?---Yes.

Thank you. Now it only relates to proceedings which have been dismissed or withdrawn, is that correct?---Yes, dismissed or withdrawn primarily, yes.

You say primarily. Are there other things that it looks at?---There might be something else that comes up but most matters is in relation to those matters that are dismissed or withdrawn.

And the oversight that it provides is directed, among other things, at identifying issues concerning integrity of police officers who have appeared as witnesses in proceedings?---Yes, that's correct.

And acknowledging that as a positive step, if an issue arises with respect to the integrity of a police officer who's giving evidence in proceedings and that arises outside the context of a failed prosecution, is there any procedure by which Professional Standards or any other internal body becomes aware of that?---It's only if it gets reported by the prosecutor at the time or a police officer that's present within the court.

And would it be the case that sometimes the conduct of a prosecutor themselves might be considered by the review panel?---Yes, that's correct.

And just going back in time to May 2019 when Judge Borchers delivered his judgment in the Ryder matter, I understand that the review panel was not in place at that time?---That is correct.

And is it therefore correct that a matter of police witness integrity or prosecutorial integrity would likely only come to the attention of Professional Standards if it was self-reported or if it was raised by, for instance, the representatives of the accused? ---Yes, that's correct at that time.

Is there any then or now, is there any positive obligation placed on, for instance, prosecutors in proceedings to report such matters back?---Yes, there are and that is why they are also part of the – well the Crown prosecutors are part of the Failed Prosecution Review Panel and they have to provide – well any withdrawn or dismissed matter, they are to provide that as part of that panel.

Okay. But if we're looking at a period of time before the review panel is in existence, was there any positive obligation derived through orders or any other document putting an obligation on prosecutors and police officers to report such incidences of conduct?---Not that I'm aware of.

And is it the failings in that system which in part have prompted the reform and the development of the review panel?---That was part of it but it was also part of our continuous improvement as in trying to improve our business, as it's very costly doing prosecutions and we want to ensure that we're providing – costly and we want to make sure we get the right outcome and so that's why we wanted to ensure that we have processes in place to improve practices through, not just the police but also through the DPP.

The PSC investigation that followed Judge Borchers' decision came about as the result of a re-agitation by a complaint by NAAJA, is that your understanding?---I can't remember how it exactly came to the PSC.

Sorry?---I can't remember exactly how it came to the PSC.

Okay. Do you accept from me that that was the case. If NAAJA had not agitated a complaint at that point in time was there any – can we be sure in any way the police would have acted upon or even become aware of Judge Borchers' comments in his judgment?---Probably not at that time, no.

The next area of questioning is in respect of the standard operating procedures of the IRT. And for the purpose of this questioning could I ask for brief reference 17-23 to be brought up. And could we scroll down to page 11, I think. And I'm going to just ask some questions that relate to this second – sorry, the third to last paragraph, which reads, "Members who are the subject of disciplinary action will be stood down during the investigation or subsequent penalty period at the discretion of the Commander, Southern Command in consultation with the OIC IRT and Alice Springs Divisional Superintendent". Just to contextualise my questions. You gave some evidence on this issue on 6 March and in response to a question from Dr Freckelton. And the question in short – in cut-down form was, "Now to cut through this, what was the situation with Constable Rolfe in the period leading up to the tragic events". And your response was, "No, Constable Rolfe had no formal disciplinary action ongoing at that time"?---That's correct.

That's transcript reference page 4493. And then her Honour asked a question, "Should he have however been subject to disciplinary action given CW and LM and the fact that he'd failed to activate his body worn video on two further occasions". And the response from you was, "Well I know your Honour, as he didn't have any disciplinary action pending. There was investigations ongoing at that time and the Command at Southern Command was fully aware of those matters, because they all form part of the Command Management Team meeting". And with emphasis, "And so ultimately it was a decision of the Command of Southern Command whether Constable Rolfe remained in the IRT or not". Do you accept or is it the case that the investigation of a complaint engaged the discretion to either stand down or not stand down a member of the IRT, the fact of an investigation?---No, the fact of the investigation does not because that is not the commencement of disciplinary action.

No. But the – if we can bring up the standard operating procedures again. It reads, "Members who are the subject of disciplinary action will be stood down during the investigation or subsequent penalty period"?---Yes, that is correct. If the investigation determines there's disciplinary action then that applies. But until this very action is commenced there is no disciplinary action.

So in that passage there, what work does the word investigation have to do?---So when you do an investigation, like we have a complaint in relation to say three, four members. One member may be subject to disciplinary action during that investigation while the other three members are not.



So is your position then that until and unless disciplinary action had been decided upon, there was no obligation for the Command to consider whether to stand down a member of the IRT?---No, I'm not saying that at all. I'm saying that's what the IRT standard operating procedures states. It's not the Professional Standards standard operating procedure. We provide information to the Commander at the time who'd be the Commander of Southern as to any concerns we have, whether it is disciplinary action or investigation, we provide those concerns to the Commander of Southern. But ultimately it's the decision of the Commander Southern whether that person will remain in the IRT.

And just on that, I think you talk about Command Management meetings being the occasion on which relevant people become aware of disciplinary proceedings and disciplinary investigations against members?---Yes, that's correct.

They happen bi-weekly or every two weeks?---Every fortnight.

Fortnight. And just in terms of how that occurred in practice, would there be, for instance, a table of people or members and information as to whether or not those members were facing disciplinary proceedings?---Yes, it's all on there.

But that is - - -It's all on CMT agenda.

Does that information also present, in a digestible way, whether or not a particular member was also a member of the IRT?---No, because professional standards crime actually do not know who's actually in the IRT.

Well – so at the team – sorry, at the command management meeting, a member of the IRT – well sorry, I withdraw that. If at a command management meeting, information was presented that a member was being subjected to disciplinary action, how would anyone link that back to an obligation to consider whether or not they should be stood down from the IRT?---It would be linked through the obligations, of course it is the commander and the superintendent of that area to determine where their staff are working and what requirements will there be in relation to their staff? ---Okay, so in practice, Howard, the commander of southern command would be informed that a member of the IRT the subject of disciplinary proceedings and he needed to exercise his discretion. All I can tell you is he'd be informed of his member had these issues as to whether the IRT – they have knowledge of who's on their rosters and who's part of the groups within their areas of command.

Are you aware of whether or not - well, I withdraw that. The fact of a disciplinary proceeding may have the consequence for a member who's not a member of the IRT?---Can you – sorry, can you repeat that, Mr Hearn?

If a member who is not also a member of the IRT is subjected to disciplinary proceedings, they for instance might be suspended?---Yes.

Yes. If a member of the IRT is subject to disciplinary proceedings, they might not be

suspended as a member, but they might be stood down as a member of the IRT?  
---They might be on the direction of the commander southern, yes.

Are you aware of any instance in which an IRT member was stood down as a result of disciplinary investigation or disciplinary action having been taken?---No, I'm not.

Are there any records of that?---I'm not aware of any records.

Are there any records of decisions having been made as to whether or not IRT members ought be stood down from membership in the IRT?---I have not knowledge of any records.

Can you tell us how that decision-making might have actually been made by the commander. Was there a formal process for that decision to be made or is it something which – can happen entirely within his or her head?---Sorry, I've had no input or knowledge of the decision-making of the commander on how he goes about his business.

Does Professional Standards, for instance – well, I withdraw that. Does Professional Standards, in your experience, communicate with the IRT and those who manage the IRT to inform them of the fact of a disciplinary investigation or process?---No, we treat every member the same, and we report all our matters through their chain of commands.

But the thing is, not all members are the same, are they?---There are different standards for the IRT in terms of whether or not they would be stood down from their position or could be stood down from their position?---Yes, as per that standard operating procedure.

I'd now like to ask you some questions about the police investigation that followed the judicial finding by Judge Borchers that Mr Rolfe, Constable Rolfe, lied and fabricated evidence, do you agree that on 9 May 2019, Professional Standards reinitiated or initiated an investigation which followed Judge Borchers' decision?  
---Yes, I agree.

And this is at page 143 of your affidavit. Two months later on 8 July 2019, a referral was made to Crime Command?---Yes, that's correct.

And that was, tell me if I'm wrong, to investigate the question of perjury and making a false statement?---That's correct, yes.

And so at that point, the investigation was effectively separated. There was Crime Command looking at the perjury and the false statement issue and Professional Standards looking at the balance of the issues?---Sorry, the balance of the issues?

Use of force?---The use of force had already been looked at.

Yes, I'll come back to that. And just procedurally, if and when Crime Command

decides not to proceed with any action, an investigation, a disciplinary investigation, would be returned, or the investigation would be returned to Professional Standards. Is that right?---Yes, if they found that there was perjury committed, yes.

At par 146 of your statement, you say that on 5 December 2019, the officer in charge submitted an opinion filed to the Judicial Operations' section?---Yes, that's correct.

And is the officer in charge that you refer to, the officer in charge of Crime Command?---No, it's the – because Judicial Services outside of the Crime Command come under Specialist Services Command, which has its own separate commander.

Okay. So I'm sorry, so the officer in charge is attached to which branch?---You're changing its name, but it's the Specialist Service Command.

Okay, all right. So the officer in charge of the Specialist Services branch referred to opinion filed for a Judicial Operation section. Is that right?---Sorry, can you repeat that again?

THE CORONER: Have you got your paragraph there in front of you, 146?---Yes, I do, your Honour. And it's – was referred to the officer in charge in the Judicial Operations section.

MR HEARN: All right. And you say in the second – sorry, the last sentence at par 146 that the conclusion reached by a judicial operation section was that there was insufficient evidence to proceed with the prosecution for perjury?---Yes, that's correct.

And just to be clear, that decision was not made on 5 December 2019. Do you agree with that?---Was not made?

Was not made on that date?---Well, that's the information I have.

Okay?---But I believe it went for further review back through the Assistant Commissioner of Crime just to have a further review of it, and it came back with the same conclusion.

Could I ask for brief item 3-144 to be brought up on the screen please, page 19 specifically?

I just want to ask you some more questions about the journey that this matter took before it's - - -?---Yeah, you're all right.

- - - ultimate conclusion with Crime Command, and perhaps we can just start with page 1, so we know what this document is. So this was a memorandum that was sent on 17 October 2019 to the Superintendent of the Special References Unit. Do you recognise that document?---Yeah, I remember reading it, I just can't remember where.

And can I ask, due to my own ignorance, what was your function and role at this time?---During this time?

Yes?---I was actually the Commander of College Command.

Okay. And so, did you read this document then or have you read it - - -?---No, I've read it since when - - -

Okay.

Could we scroll to page 19, please.

So this, would you agree, is a 19 page document that has been called into existence as a result of the referral to the Judicial Operation section?---A referral to – yes.

And in the body of this document, there is effectively a summary of the prosecution case and what occurred at trial. You agree with that?---Yes.

Yes. And the conclusion that's reached by Detective Sergeant Sonia Kennan is that it is requested, or the recommendation I should say, which is made by Sonia Kennan on 17 October, it is requested that the attached file is submitted to the ODPP for legal opinion to identify if there is sufficient evidence to support a prosecution. Do you agree what is being recommended is that there be an independent assessment of the evidence?---Yes I agree that's the recommendation of Detective Sergeant Sonya Kennon.

And just to place this relevantly within the – within the relevant chain of events, this advice, or recommendation, was given on 17 October, three weeks before the fatal shooting incident?---Yes, that's the date indicated.

Could I now ask that brief item 3-146 be brought up, 3 – 3-146, I hope.

Okay, so there again, is a memorandum, this time dated 12 December 2019. It's – you can't see whose written it – yes you can - - - ?---Yes you can.

- - - from – from Jackson Evans, Detective Acting Senior Sergeant?---That's correct.

And it was addressed to Crown Practise Manager, Office of the Director of Public Prosecutions?---That's correct.

And the first paragraph of that memorandum reads, "This memorandum is submitting seeking an independent assessment of evidence. An opinion from your office in relation to allegations made against current serving police officers, stemming from an arrest, and subsequent judicial proceedings in Alice Springs on 11 January 2018." This is a – a – I suppose a memorandum which is in response to, and in addition to the memorandum that was prepared by Detective Sergeant Sonya Kennon, is that correct?---Yes, that's correct.

And although it's addressed to the Office of Director of Public Prosecutions, do I understand that it wasn't in fact sent, because there were levels of approval it needed to go through – be gone through before that could happen?---Yes that's correct.

Okay, and just so I'm – we understand. What – what is the process that needs to be followed before a matter such as this might be sent to the DPP for advice? What are the levels of approval that need to be gone through?---Yep, so the investigating officer would put through his investigation, or the report, as well, covering report. It would go through his chain of command. And if it's a criminal investigation as this one, it would go through the superintendent of the Crime Division. Then it would go through the – normally through the Commander of Crime, and then to Judicial Services.

Mm mm. And in terms of the ultimate decision making, is there a Veto power amongst all of those different steps, or is a consensus that needs to be arrived at? How does that work?---No, it's on the assessment of the individuals doing the assessment, as to whether they determine that there is a prima facie case or not.

But surely there must be ultimate decision making resting with one person?---Yes that's correct.

And who does that rest with? What rank, or what position?---It depends on – some may determine that they're unsure and they ask for it to be further reviewed, and it would go to the next level. So could be – whichever rank, but it's up to wherever that person's doing the review, taking into account all the evidence, that on reasonable grounds, that there's a prima facie case of offences being committed.

THE CORONER: So it could go from Detective Acting Senior Sergeant Evans, to the Superintendent of Crime Division, and if the Superintendent of the Crime Division decides there isn't a prima facie case, it stops there?---That's correct.

So it doesn't go up for approval or review to the Judicial Operations Section?---No, and that's correct. And if the person at that stage determines that there's further avenues of investigation, because to try and make a prima facie case, it would go back down to the investigator.

Right. But it has to get through the Superintendent Crime Division, in order to be considered by the Superintendent, Judicial Operations. They then – they then considerate it themselves, to determine whether it in fact makes it to the DPP? ---That is correct, your Honour.

MR HEARN: Thank you.

And can we just scroll to the end of that document please. Not quite that far. To the end of the memo before the attachments I think is what I was hoping for. Yes, one – the page directly above it. Thank you.

THE CORONER: You might just go down – and just quickly go down though.

MR HEARN: I am going to come to what's below.

THE CORONER: You're coming down, okay, thanks.

MR HEARN: Yes, yes.

If we look at the – sorry yes, if we look at the last paragraph on that page –

Thank you, [Edited].

It reads:

“It is my opinion that the offences are prima facie. A case exists for the offences, however, the prospects of conviction is low, in being able to prove beyond reasonable doubt that Constable Rolfe and Zendelli fabricated their testimony. It stands however, in the public interest, that an independent assessment of this evidence is conducted by your office”

?---Yes sir, correct.

Intended to be read by – by the Office of Director of Public Prosecutions of course. So what is being recommended here is that it be the Office of Director Public Prosecutions, that is the one – or that is the organisation that conducts an assessment of the evidence?---Yes.

And what Detective Sergeant Jackson emphasises, or refers to, is the public interest in that course being followed, notwithstanding, the low prospects of success in any prosecution?---Yeah that's what - - -

The public interest?---That's what is indicated by that report, yes.

Do you accept that there will be cases where it will simply not be appropriate for real or optical reasons, for the police to be the ones who are assessing the sufficiency of evidence in support of police having engaged in misconduct or criminal conduct? ---Criminal conduct, yes.

And that's what was being considered here?---Yes, that's the indication, yes.

And do you accept that for police to make a case pass through the filter of their own assessment of prima facie, that that may prevent a warranted independent assessment of that evidence?---Sorry, could you repeat that?

Yes. Well let me put this another way. I suggest to you that this particular case had a number of ingredients that meant it was a matter which was screaming out for independent assessment. And that's what – what I mean by that, is assessment of

the sufficiency – sufficiency of evidence, by an organisation, other than the police. That's the proposition I'm putting to you in general terms. Do you agree with that or disagree with that?---This was the view of Mr Evans when he put his report through, that it needed independent – so.

Well it was his view. It was also the view of Detective Sergeant Sonya Kennon, correct?---Yes, that's correct.

And if we scroll down, we see that Detective Acting Superintendent Mark Malagorski also added his support for that course of action?---Yes, that's correct.

So as at 16 December, we have three people supporting the idea of an independent assessment of the DPP, notwithstanding, Detective Sergeant Evans' assessment of – of the evidence, himself?

THE CORONER: Well he assessed that there was a prima facie case, and he made a separate assessment, in relation to the prospects of conviction.

MR HEARN: Yes.

THE CORONER: So there were two separate assessments that he made.

MR HEARN: I accept that.

THE CORONER: But he accepted that – or he assessed that there was in fact a prima facie case. Which I think is the significant issue.

MR HEARN: Do you agree that – I'm going to put to you a list of factors which I'm going to suggest to you, meant that this is a case which ought to have been referred to the DPP for independent assessment. Firstly, there'd been a prior professional PSC investigation into distinct but related conduct in which Mr Rolfe and Ms Endelly (?) had been cleared of wrongdoing. Do you agree with that?---They weren't cleared of wrongdoing. It was that there was insufficient evidence to sustain the allegation.

There'd been a determination that no action would be brought against them?---That is correct.

Do you agree that that is a matter which is related to that which Crime Command was at that point – at this point considering?---Yes.

In substance it's a related matter?---Related substance, yes.

Do you think that that is something which would weigh in favour of an independent assessment being conducted at this point?---It would indicate that it should be and it was recommended. But myself and PSC were not the decision makers during this process.

Do you agree that this matter involving as it did the potential that police fabricated statements to bring about a criminal case is a factor weighing in favour of independent assessment as to whether charges should be brought?---Sorry, I think I'm misunderstanding what you're asking there.

Do you agree that this investigation which was considering whether or not police had fabricated statements and brought about a criminal case in consequence of fabricated evidence, is a factor which weighed in favour of independent assessment as to whether charges should be brought?

MR OFFICER: Your Honour, I might be wrong but I'm pretty sure this was assessed by the DPP on two occasions. (inaudible) matter of days said that no charges would be proffered (inaudible).

MR HEARN: I'm happy to ask that question directly.

Has this matter ever been sent to the DPP for advice as to whether charges should be brought?---No, it is my understanding it has not and I actually clarified that last week with the Assistant Commissioner of Crime who has the file and it did not go to the Director of Public Prosecutions.

MR OFFICER: Well your Honour, that creates a similar problem. I'll see if I pull up that spreadsheet that you (inaudible) in support of the affidavit.

THE CORONER: This spreadsheet?

MR OFFICER: No, the second - - -

THE WITNESS: There was a DPP opinion in relation to the application RE the Defence Force records. There was a DPP opinion or legal advice sought on that matter.

DR DWYER: Your Honour, Ms Walz is pointing us to exhibit 23, page 5 notes that in relation to the potential charge of perjury there was a recommendation of Crime Command that there was insufficient evidence to proceed and that (inaudible) 5 December 2019. Constable Rolfe formally advised on 28 October 2022 that there was no evidence to support the breach of discipline on the basis of perjury and the investigation was closed. My recollection was at the beginning of this inquest there was some information provided by Dr Freckelton about that.

THE CORONER: Yes.

MR OFFICER: My understanding was that it has gone to the DPP (inaudible 22505).

THE CORONER: Yes, Mr Hearn or Mr Officer, I don't know where you want to go with this. Obviously, Mr Hearn is examining the police decision making process. I don't see any issue with that.



MR OFFICER: I wasn't (inaudible) where we were at cross purposes in the questions (inaudible) information we've been given today.

DR FRECKLETON: Yes. I can help a little with this, your Honour. The source of what seems to be my wrong understanding is affidavit number 2 of Mr Porter. And there is a table at the end of that. And you'll see on page 16 an entry in relation to this issue at the bottom of the page in relation to (inaudible). Does your Honour have that?

THE CORONER: I've got the affidavit. I'm not sure I understand what table. Do you know the - - -

DR FRECKLETON: If you do it just by the page numbers, your Honour, you'll find it.

THE CORONER: I don't have the - - -

DR FRECKLETON: The bottom right hand side.

THE CORONER: Mine isn't paginated in that way.

THE WITNESS: So your Honour, it's the table following par 64.

THE CORONER: It's in the body of the affidavit. Okay.

DR FRECKLETON: It is. It's the table right after par 64.

THE CORONER: I've got that.

DR FRECKLETON: So if you go to the third page of that table you will see an entry at the bottom of the page which is in relation to (inaudible) allegation. Do you have that?

THE CORONER: Yes.

DR FRECKLETON: If you go to the right hand column you will read, "Outcome pending. Awaiting advice from current Commander about the outcome of the second review or submission of opinion final to DPP allegation perjury".

THE CORONER: Right. And it wasn't in fact submitted.

DR FRECKLETON: So it would appear.

DR DWYER: And your Honour, that is consistent with what Dr Freckelton told the court.

THE CORONER: Sure.

DR DWYER: So – and in the transcript from 9 September 2022 from page 319 Dr Freckleton read that entry and then said, “We take it that that is an entry which has generated the consternation of my learned friend. I’m in a position to update the court in relation to it. We hope to alleviate the concerns of Constable Rolfe and our learned friends. This issue had been given further consideration by Crime Command and a decision has been made not to refer the perjury issue to the DPP. Constable Rolfe will not be charged with perjury in respect of this issue. We hope that contracts the issues”.

“It’s a decision that has been latterly and on the basis of consideration of all the evidence we are in the ordinary course of these matters not been raised in respect of the re-evaluation of the Ryder matter and the DPP has not been asked for advice or involvement in respect of this as a result of the re-evaluation”.

DR FRECKLETON: (inaudible).

THE CORONER: Mr Hearn, we’re back to you and your course of decision making in relation to this issue through the police.

MR HEARN: Thank you.

Assistant Commissioner, I was just going through a number of matters and suggesting to you that they were factors weighing in favour of independent assessment of the evidence or sufficiency of evidence in this matter. And I put two matters to you. I wish to put two more. The third is that this matter potentially involved police lying in court in an attempt to secure a conviction. That is a matter which weighed in favour of independent assessment?---Yes, as per the recommendations.

And then exceptionally, I’d suggest in this case, all of that was added to by – or confirmed by damning judicial findings by Judge Borchers. That’s an exceptional circumstance, would you agree?---Yes.

And an exceptional circumstance weighing in favour of independent assessment of whether or not this was a matter that ought to be subject of charge?---Yes, as per the investigator’s recommendations.

Do you agree that this matter ought to have been independently assessed by the DPP?---On what I have I agree that it should have been assessed by the DPP. But we have people who are in charge of a prosecution’s section and people are high up in Crime who have extensive experience in investigations who have assessed the evidence and come to their decision.

Isn’t the fundamental issue here - - -

THE CORONER: I can just – is there a document on the brief which outlines reasons for their decision?

MR HEARN: The next document I'm going to go to might shed - - -

THE CORONER: Great.

MR HEARN: - - - some light on that. Could we bring up these, [Edited], brief reference 3-1467.

And while that's coming up, can I suggest to you that the fundamental issue here is that the decision not to refer to the DPP for assessment of the evidence has come about because of a decision – no, I withdraw that. Can you confirm that this is a memorandum dated the 23rd – no wrong. Yes, that's the right document, memorandum dated 23 December 2019?---Yes, I can confirm that.

That is addressed to you?---Not to me.

Sorry, to - - -

MR FRECKELTON: Commander Procter.

MR HEARN: Yes, my apologies.

Have you seen this document?---Yes, I have.

And can we – it's from Superintendent Richard Bryson, is that right, second line? Confirm that?

THE CORONER: It probably speaks for itself.

MR HEARN: Yes.

THE CORONER: I don't think we need to go through this process.

MR HEARN: Thank you, your Honour.

And did you read that at the time back in December 2019 or have you read it more recently?---No, recently. I was in Queensland on holidays at that time.

And can we scroll, please, to the end of that document and up a little.

And the conclusion that's reached there is – "I'm not minded to forward the files for opinion at this time, unless the investigation is furthered and some admissible and persuasive evidence is evident on the briefs."?---Yes, that's correct.

Do you agree that this is effectively the memorandum which has the result that this matter is not referred to the DPP?---I guess.

There is some further investigation which is conducted and a further memorandum which is submitted in February of 2020. Do you agree with that?---Sorry, I would

need to see that document.

THE CORONER: Can I just ask a question, and I'm really sorry, Mr Hearn?

MR HEARN: No, not at all.

THE CORONER: Earlier I thought you said the test was whether there was a prima facie – whether there was prima facie evidence, but in par 3, there is a different test which is a reasonable prospect of conviction. Are there two separate tests applied by the police?---Generally, it becomes too real a prospect of conviction, your Honour, it goes in through to DPP to make that assessment.

So, the test that, as you understand it that's normally applied by police, is a prima facie test?---That is my understanding. That's how I apply it. I do note with this that Superintendent Richard Bryson, who is the one that made the decision, he's actually done a lot of work with DPP. He's a lawyer in his own right and as in charge of our police prosecutions for a number of years.

That might be the case, but I'm just trying to identify the test that's applied?---It's a prima facie case, your Honour.

MR HEARN: Would there be some cases in which the position was taken by police that they wouldn't engage at all in an assessment of the evidence and simply take the view that it was inappropriate for the police to be making any decisions about whether or not there should be charges brought against a member?---Sorry, can you repeat that again. I missed about the - - -

MR FRECKELTON: Before that is said, your Honour, just to follow on the issue you've just raised, you see the issue of a prima facie case addressed by Superintendent Bryson in the last paragraph of that first page (inaudible).

THE CORONER: I'll just have a look.

MR FRECKELTON: Typically, we start at the second page. Anybody can find a prima facie case. I'm not quibbling with the text.

THE CORONER: Sorry, are we going up or down?

MR FRECKELTON: Up 147, that's it. The first line and following, your Honour.

THE CORONER: Yes.

MR FRECKELTON: That doesn't go to what the test is, but it goes to what the superintendent's reasoning was, taking into account the prima facie test issue.

THE CORONER: Yes, Mr Hearn.

MR HEARN: Thank you. Looking at par 2, if we could - - -

THE CORONER: Of this particular page or - - -

MR HEARN: Sorry, par 2 of the document.

THE CORONER: Of the document, okay sorry.

MR HEARN: No, at page 2. I apologise, your Honour.

If we go to par 2 beginning on the – I suppose the second sentence at par 2, it reads, “On my reading of the material where he --”, referring to Judge Borchers,

“may have been right to have not been satisfied as to the relevant elements of the offence to which was being heard to the requisite threshold, that being beyond reasonable doubt. In my view, there was no evidence before me to make findings that the members lied or fabricated their evidence. And in order to do that, there would need to be cogent, independent evidence to be relied upon.”

Do you think it was appropriate for Superintendent Bryson to be discarding the judicial finding in favour of his own assessment as to those matters?---Yes, I actually have reviewed the decision of Judge Borchers and I note that some of his summations actually were not actually entirely correct.

Do you think that there may at least be an optical issue in respect of police arriving at a different conclusion as to police misconduct than that reached by a judicial officer who is an experienced fact-finder?---Yeah, but when you do your evidence and you do an investigation, you try to go get evidence from the witness. Judge Borchers was not willing to provide anything further, other than his court outcome.

One of the issues which is raised in this document by Superintendent Bryson is his view that he is not able to discern to which conduct Judge Borchers is referring in respect of his findings of lying and fabrication. You're aware of that?---Yes, that's what his memorandum says.

Do you agree that perhaps the particularisation of a charge of perjury is something which is better considered by the lawyers within the Office of the Director of Public Prosecution than by the police themselves?---No, police have to determine whether they have enough evidence to put to the courts.

Sorry, just changing direction a little bit, procedurally, what would have occurred if Superintendent Bryson had supported the recommendations of the three police officers who had submitted memorandums or endorsement of memorandums beforehand?---Procedure would have occurred. If he endorsed it or approved it to go, it would have went through the judicial services, the Judicial Operations section and to DPP for opinion.

Okay. Would there have – sorry if I missed the answer, but - - -?---We'd actually

take two ways. We could actually determine at that stage if there was prima facie evidence, and sufficient evidence, we could have laid the charges ourselves, or we could have referred it to also DPP for opinion.

Assuming we're talking about the latter course of action, if Superintendent Bryson had supported the memorandum, the recommendation in the memorandum from Jackson Evans, would the matter at that point have been referred to the DPP?---Yes, from from Mr Bryson's office, yes.

There are other observations made by Superintendent Bryson as to the conduct of the – the police officers involved. One of the observations he makes is – is as follows, he says, "My reading of the material on file, more properly demonstrates that the member's actions as being unprofessional." That's one observation. Another observation is "That it is more properly" – sorry, "That more properly, the material demonstrates that the members don't know their powers." To your knowledge, of either of the two - - - ?---Am I able to see the document, your Honour?

Would that (inaudible)? So that's document 3-147.

MR FRECKLETON: Just (inaudible) my friend, "More properly the material demonstrates that the members don't know their powers. Their evidence was fully given, and they do not appear to have been properly briefed by the prosecutor, all of which appears to have (inaudible) outcome".

MR HEARN: Yes, I thank my friend for that.

My question is simply this. Was – were either of the officers, at any point, counselled, or given any remedial advice, or additional training, to deal with the observed unprofessional conduct for the fact that Superintendent Bryson observed them not to know their powers?---No they have not. Not to my knowledge.

And to be clear - - - ?---And one of them still's not at work.

Sorry?---And one of them after the decision is still not at work.

No, but he has returned from – returned to work, from time to time for - - - ?---That's three weeks in total, on a return to work program.

Those are my questions, thank you.

MR MULLINS: Just one question, your Honour.

THE CORONER: Mr Mullins.

XXN BY MR MULLINS:

MR MULLINS: Assistant Commissioner Porter, my name is Mullins, I appear on behalf of the Brown family. I just have one question my clients wanted you to

respond to. On 6 March, you said that Constable Rolfe's legal representatives were given a one day extension to respond to the s 79 notice in relation to the essay. Can you give an update on that please?

MR OFFICER: Well I object to this line of questioning, but I have a matter I would like to raise with Mr Mullins (inaudible) take a short – a short break (inaudible).

THE CORONER: I'm sure you can have a chat during the afternoon adjournment then, if Mr Mullins wants to pursue it then, we can have – raise any issues. So I won't allow the question at this stage.

MR MULLINS: Thank you.

MR OFFICER: If your Honour (inaudible) – sorry. I thought you were allowing it.

THE CORONER: No, no.

Mr O'Brien.

MR O'BRIEN: Thank you, your Honour.

XXN BY MR O'BRIEN:

MR O'BRIEN: Assistant Commissioner, my name is Connor O'Brien, I'm appearing for the Parumpara Committee. I understand that you're familiar with my clients and their role?---Sorry yes, I shouldn't nod.

Assistant Commissioner, you would accept, wouldn't you, that the failure to activate body-worn camera can have very serious consequences?---It can have consequences as in it's an avenue of evidence that's unavailable to make assessments or decisions in relation to the interaction of police at that time, yes.

Well, maybe the difference between serious police misconduct being substantiated and being un-substantiated?---Yes, it could be the point of difference in evidence, yes.

And indeed, in this case in this court, we've heard instances of where body-worn camera has been used, it has revealed Constable Rolfe engaging in conduct that on one view, would constitute a prosecutable offence. Do you agree with that?---You mean in relation to the complaint allegation?

Yes?---Yes.

And as we've seen in this court, on a number of occasions where body-worn camera has not been used, a number of allegations of assault made by Aboriginal people, against Constable Rolfe, have not been substantiated?---Yes, that's correct.

You would agree that body-worn camera footage is a critical tool to ensure police accountability?---Yes, no I fully agree.

And you would also be aware of evidence before this inquest of Alice Springs Police Officers, including sergeants, deliberately manipulating their body-worn cameras to avoid accountability?---I don't know if you could say deliberately manipulating.

Well, are you aware of the text exchange between Constable Rolfe and Sergeant Kirkby, discussing turning – actively turning body-worn cameras away, so they do not capture a particular incident?---Yes, I know that's within what's been put before the coronial inquest in evidence.

And do you contest that that's an example of body-worn cameras being deliberately manipulated to avoid accountability?---That is conversations between people as to that's what occurred, but I do not have evidence that that's occurred.

What about the evidence of Sergeant Kirkby, announcing to other officers present, that he was activating his body-worn camera, and giving evidence before this court, that he did so, to ensure that they behaved appropriately while the camera was on? ---I can't go to the state of mind of Mr Kirkby. I have no evidence that he has done that.

He's accepted that he's done that, in evidence?---He may have accepted, but we have not been provided, or found, where he has actually done that.

So just – just so I'm perfectly clear, Sergeant Kirkby saying on oath, that this is conduct he has engaged in, is insufficient evidence for your purposes, is that right? ---Yes it is. Because we need to identify the incidents, the other members involved.

DR DWYER: Can I just check that this is not a matter that is currently under investigation?

THE CORONER: Doesn't sound like it is?---It is, the text messaging is a current live matter.

MR O'BRIEN: I – I wasn't referring to the text messaging in that, just to be crystal clear?---But you did refer to the text messages.

The previous - - -

THE CORONER: Right now, we're talking about the evidence given in these proceedings.

DR DWYER: That follows from the evidence that he gave.

MR FRECKLETON: Para 52, of Mr Porter's third affidavit, your Honour.

THE WITNESS: Because there's a still live investigation in relation to Mr Kirkby.



MR O'BRIEN: Just so I'm clear, and for the record, about that. Perhaps – and tell us if you're unaware, and we might be able to check it. But there are two separate incidents that I have referred to. One is the text message about manipulating body-worn camera footage. And the other is about Sergeant Kirkby announcing to other officers present that he was turning his camera on. Are both of those subject of investigation?---The text messaging is part of a current ongoing matter. And the other matter is part of – or the other one, is part of an ongoing investigation with Sergeant Kirkby.

In your statement, you've canvassed a number of incidents where police officers, including, but not limited to, Constable Rolfe, failed to activate their body-worn camera footage?---Yes that's correct.

And that conduct has attracted remedial advice in response?---Yes, that's correct.

And none of those matters that you have referred to, none of those instances of a failure to activate body-worn camera footage, that you've referred to, has led to those police officers being subject to formal disciplinary action, is that correct?---As in this particular incident?

The incidents in your affidavit, of police officers failing to activate their body-worn camera.

THE CORONER: Which incidents are you referring to in the affidavit, because there are I think – there's all the stuff that we've been talking a lot about, but there's also the incidents that have been identified since and have been subject to responses.

MR O'BRIEN: Has there been – perhaps I can ask it this way, your Honour.

Has there been an incident of a police officer failing to activate their body worn camera footage that has resulted in formal paths for disciplinary action?---Yes, there has been a number of incidents.

In respect of Constable Rolfe it's fair to say that his failure to activate body worn camera footage has attracted remedial advice on numerous occasions?---Yes, that's correct.

And you say in your affidavit that remedial advice is often very effective?---Yes, that's correct.

Have you done studies looking at the efficacy of remedial advice?---No, I have not.

I mean the material that you've provided in 2018 alone, Constable Rolfe was given remedial advice on four occasions with respect to failing to activate his body worn camera footage. And for your assistance, those occurred on 21 February 2018, 5 March 2018, 18 April 2018 – that's three times within the space of two months – and then again on 4 October 2018, although that was in respect of the Ryder

incident that occurred at January 2018. Do you accept that he was given remedial advice about failing to activate his body worn camera four times in 2018?---Yes, I accept that.

And do you accept that in 2019 there were further instances of Rolfe failing to activate his body worn camera footage, including on 1 April, 20 April and 28 June? ---Sorry, which year?

Of 2019?---You mean in relation to the incidents themselves, yes.

Doesn't that suggest to you, Assistant Commissioner, that remedial advice is not effective?---It doesn't – I'm not suggesting that it's effective for every single person every single time. But on evidence of what we have and giving remedial advice to other members is that they don't – there is no evidence of reoccurrence of their misconduct.

I thought that you said you hadn't done any studies to that effect?---I'm just saying when we examine members we get complaints against police, so we will have that they didn't activate their body worn video, like say two years ago, they'd had complaints since and they have activated their body worn every single time. So that indicates to us that they did learn from getting their advice.

When you receive a complaint about police misconduct, do you look at their history of activating or failing to activate their body worn camera footage and take that into account in determining whether to uphold the complaint?---Yes, we do take that into account. If there is other evidence to take into consideration as well. Just the sole absence of body worn is not evidence.

What about the repeated absence of body worn?---It's still not evidence of wrong – if you've got no evidence – that's evidence of them not following a policy. That is not evidence of any action that's been taken by the police officer.

I might circle back on that shortly, Assistant Commissioner. But as you are probably aware, my clients focused on large scale systemic issues in this inquest. Would you say that the internal police disciplinary process did not adequately identify and effectively prevent misconduct by Constable Rolfe prior to November 2019?---No, I'm not saying that at all. There was a failure on behalf of body worn in relation to the remedial advice by Superintendent Vicary and Senior Sergeant Gall, because they did not report that to the Professional Standards at that time. That's the only real failing from my perspective.

Can I suggest to you that the repeated failure to activate body worn camera footage and laughing about manipulating body worn camera footage in text messages shows an insufficient regard for police accountability?---I'm not going to comment on text messaging as I'm the delegate of the Commissioner in relation to possibly making outcomes in relation to that matter.

Can I suggest to you that the failure to escalate these matters to formal disciplinary action shows an unacceptable tolerance for violence against Aboriginal people?  
---No, I do not.

And to be clear, Assistant Commissioner, what I'm talking about there is repeated use of force incidents in respect of Aboriginal people without body worn camera footage, the deliberate manipulation of body worn camera footage during the arrest of Aboriginal people, the repeated complaints by Aboriginal people that they have been violently assaulted. Those complaints repeatedly being unsubstantiated for want of body worn camera footage. Instances of senior police – well police making use of force entries that are inconsistent with the body worn footage that is available. And no case those matters being escalated to formal disciplinary action. Do you not think that that shows an unacceptable tolerance for violence against Aboriginal people?---No, I do not.

Just to be clear, so you understand what I'm putting, this is not limited to Constable Rolfe. This is other people who attended who failed to activate their body worn cameras. It's sergeants, who I'd suggest to you created a culture of avoiding accountability. It's senior officers who repeatedly dismissed or found unsubstantiated complaints of assault raised by Aboriginal people and it includes a sergeant looking at body worn camera footage of Constable Rolfe pushing over two intoxicated Aboriginal men without cause and not recognising any issue with that conduct?---We say that's a failure on the position of the supervisor which we have identified and that sergeant has also been given remedial advice on that particular one you're talking about, Araluen (?) and that is why we have also implemented reminders and refresher training for supervisors in relation to use of force accountability and assessment.

And I suggest to you remedial advice for conduct of that nature is woefully inadequate?---Yes, I agree. However, we were statute barred.

I also suggest to you that the failure to take more decisive disciplinary action within time entirely disregards the detrimental impact this conduct has on Aboriginal people?---It has the potential, yes.

And can I suggest to you that a culture that allowed this repeated misconduct, this conduct that was directed towards Aboriginal people and was effectively condoned by senior officers within the Alice Springs Police Station is reflective of an underlying racism within segments of the Alice Springs Police Force, including those senior officers?---No, I can't say that.

We've heard you say in this court on a number of occasions that the lack of body worn camera footage made it impossible for the PSC to substantiate allegations of an excessive use of force. And I think the words that you've used previously were that you needed to definitively ascertain the use of force was excessive and the Northern Territory Police Force has evidently concluded that cannot be definitively ascertained absent body worn camera footage?---No, you don't need to definitively obtain. You need to have on the balance of probabilities that the conduct has

occurred, but you need evidence to determine whether it has occurred or not. And in those instances it was insufficient evidence to sustain the allegation because of there might be some evidence to support the complainant, but there's other evidence that you've got to take into account, which includes other officer accounts or any other evidence that's available. There just was – is not enough or sufficient evidence to prove or determine on the balance of probabilities that the allegations were sustained.

Can I suggest to you that the consequence of this system is that Aboriginal people complaining of being victims of assault by police are consistently not regarded as witnesses carrying enough weight to sustain the complaint?---I don't agree with that. We taken into account everyone's evidence.

Can I suggest to you that when an Aboriginal person says that they've been assaulted by police and that police officer did not activate their body worn camera footage, it shouldn't be considered a neutral or even exonerating factor, it should be a course for grave concern?---Yes, it is a grave concern and that is why there is such things as remedial advise, s 14C and then ultimately part 4 because of the members not complying with the directions of the police force to activate the body worn video.

Can I suggest to you that where there's been a complaint of assault in those circumstances it should give rise to a reverse onus for the police officer to positively establish that they acted appropriately?---We get the evidence of the police officer, same as every other person that we interview, whether it be a complainant, whether it be a witness or whether it be the police officer.

You understand what I'm putting to you, that the failure to activate the body worn camera footage should in and of itself create an onus, a positive onus on that police officer to establish that they acted appropriately in the circumstances?---The positive onus on the police officer is as per his oath, is to provide honesty in relation to his actions when apprehending any person.

And you think that that's sufficient in these circumstances, do you?---Without evidence, we have to go on what the evidence is, we can't make assumptions.

I'm asking you how you take into account the evidence that a police officer did not activate their body worn camera footage. You understand?---Not really.

I'm suggesting to you that when you have one of these complaints that's been made and the police officer has not activated their body worn camera footage?---Yes.

It should be taken as a negative inference against the word of that police officer? ---Yes, it can be taken as a negative inference. But if there's no other evidence other than a version of events from one other person, on the balance of probabilities you cannot determine that there's sufficient evidence to sustain that that conduct has occurred.

We've heard over the last few days that last year you were involved in facilitating a return to work for Constable Rolfe, is that correct?---Yes, that's correct.

At the time of that engagement with Constable Rolfe to facilitate a return to work were you aware of the incident where Constable Rolfe slammed Mr Bailey into a brick wall with no attempt to announce police presence or deescalate the situation? ---Yes, I was aware.

Were you aware of the incident where Mr Rolfe – Constable Rolfe shut the lid on a child hiding in a bin before slamming that bin into the ground?---No, I was not.

When did you become aware of that?---Through evidence in the inquest at the end of last year.

That incident occurred in August of 2018. Is it a concern for you that as head of the PSC you only became aware of it during the course of the inquest?---No, it is not a concern of me because it was a finalised matter.

At the time - - -?---There's a finalised matter and there's no cause for me to look at – going back and looking at matters that have been finalised through the Office of the Ombudsman.

At the time of facilitating Constable Rolfe's return to work were you aware of the incident where Constable Rolfe pushed two intoxicated Aboriginal men to the ground at Araluen Park?---No, I was not.

Were you aware of the fact that Constable Rolfe was found with footage of that incident on his phone with those observing it laughing at the application of force against these men?---Yes, I was – this is the text messaging?

The video that was found on Constable Rolfe's phone?---Yes, I was aware of those live matters, yes.

Were you also aware of Constable Rolfe sending footage of himself tackling an Aboriginal man with what he describes as an illegal shoulder charge and laughing about the fact that man wound up in a sling for nothing?---Yes, that's part of the ongoing matters.

At the time of facilitating Constable Rolfe's return to work were you aware that Constable Rolfe had lied in his application to join the Northern Territory Police Force?---Yes, I was aware that there had been an investigation.

Were you aware of the finding that he had lied to a court before?---There was no finding of him lying to a court. I was aware there was an investigation and that there was an outcome.

I'm talking the finding by Judge Borchers?---Judge Borchers made a summation. It was not found that he committed perjury and perjury is lying to the court.

But you're aware of Judge Borchers, what you call a summation?---Yes, I'm aware of the comments of Judge Borchers, yes.

Were you aware of texts from Constable Rolfe exclaiming how he can engage in cowboy stuff with no rules in the IRT in Alice Springs?---Yes, that's part of an ongoing investigation.

And you are obviously aware of Constable Rolfe's repeated failures to activate body worn camera in 2018 and 2019?---I was aware of some of them, yes.

You were aware of the fact that numerous complaints had been made by Aboriginal people that Constable Rolfe had assaulted them?---As in allegations of excessive force, yes.

And were you aware of racist text messages from Constable Rolfe?---Yes, it's the same ongoing investigation.

So at the time of facilitating Constable Rolfe's return to work you were aware of repeated instances of racism, repeated instances of dishonesty, repeated instances of a tendency to escalate rapidly to excessive force and repeated instances of deriving amusement from the application of force to Aboriginal people?---I'm aware those are the allegations that are still being challenged, yes.

Surely you would agree that Constable Rolfe is not a fit and proper person to be a police officer policing Aboriginal people in the Northern Territory?

MR OFFICER: Your Honour.

THE CORONER: Yes, Mr Officer.

MR OFFICER: The witness has answered that (inaudible) that is not in fact someone, as the witness has said, he might be doing (inaudible) making decisions and it's an unfair question of this witness in the circumstances.

THE CORONER: Yes, it probably is.

MR O'BRIEN: I won't press it, your Honour.

Assistant Commissioner, just so you're clear and you have the opportunity fairly to respond, we will be submitting that a number of those matters even taken individually, ought to result in an instant dismissal, but I understand the objection that's been made so I - - -

DR FRECKELTON: And I reiterate, your Honour, it's important for this officer not be in a position where he's precluded from making a decision should that become necessary.

MR O'BRIEN: I'll leave my questions there given that, your Honour.

THE CORONER: Yes. Any other questions?

Ms Ozolins.

MS OZOLINS: Yes, your Honour, I have a few questions.

DR FRECKELTON: I know Ms Ozolins has a number of questions, your Honour. I wonder if we might have a break?

THE CORONER: Sure.

DR FRECKELTON: Thank you.

ADJOURNED

RESUMED

BRUCE PORTER:

THE CORONER: Ms Ozolins.

MS OZOLINS: Thank you, your Honour.

XXN BY MS OZOLINS:

MS OZOLINS: Assistant Commissioner, as you know, my name's Sally Ozolins, and I'm appearing in this inquest for the Police Association. I just wanted to ask you some questions first of all, about how the disciplinary regime and the matters arising from the, I've been calling it the Review Report, but I think others have referred to it as the Gelliot Report?---Galiat Report, yes.

Now when my learned friend from NAAJA was asking you questions the other day about the Gelliot Report, you agreed with the proposition that trust and confidence is increased in any disciplinary system, or he was referring to the complaints system, when the system is well functioning. Do you remember giving that evidence?---Yes I do.

And do you agree that that same principle applies when you're talking about internal disciplinary matters, and dealing with a disciplinary system and complaints against police officers and their conduct?---As in relation to trust?

Trust, confidence, things of that nature?---Yes I do.

And of course, not just from the members, but that obviously engenders the community as well?---Yes that's correct.

Now you gave a bit of a run down the other day on the general hearing process, that is the contested hearing process when an officer is charged, if you like, under part four, and the matter goes through a hearing process. And I can take you through it if you want. But do you recall giving the description about how a hearing officer is generally a Commander, and then following the hearing, a Commander will make a finding, and then a recommendation as to penalty?---Depending on if it's within their scope of giving the penalty as a prescribed member they can, if it's not within in their scope, or they believe it's outside of their scope, they can make a recommendation (inaudible).

Yes, yes. That's the evidence I'm referring to. And the delegation that you're referring to, is that formal delegations given by way of a statutory instrument?---Yes it is.

And it's the case, isn't it, that Commissioner of Police is delegated all functions and powers under the Act, that is the *Police Administration Act*, to you, as an Assistant



Commissioner of Police?---To Assistant Commissioner's, yes, as well as there's a schedule attached where he's delegated powers for other things within the Act, yes.

And that delegation also applies or delegates all functions and powers under the Act to Deputy Commissioners, does it not?---Yes that's correct.

Yes. So just going back to the hearing officers, if they believe that the sanction to be applied is within their delegation, they'll deal with it?---Only if they're acting – as a hearing officer, they're a hearing officer as a prescribed member. So they're acting under the prescribed member's powers, and levels of what they can do, as per the Police Regulations. So they're acting as the prescribed member, not as the Commissioner, during hearings.

Yes, so just to clarify, I think it's – and I'm not trying to test your memory, I think it's Regulation 18 of the Police Administration Regulations, sets out the limit of sanctions that each rank can impose?---Yes that's correct.

So – and – and it goes up in seriousness of penalty?---Yes that's correct.

So if a hearing officer thinks that a sanction more than what they're entitled under their own rank to impose, then an officer of a higher rank will impose a penalty? ---They can refer it to a higher prescribed member, or – sorry, at the end of the hearing, they can refer it to the Commissioner – to the Commissioner, or his delegate.

Yes, and is that person, delegate, or Commissioner, makes a determination based on their powers, as set out in the Regulations?---Yep.

So - - - ?---Well, no not as Regulations, as a Commissioner, the Commissioner has all the powers.

If referred to you obviously?---Yeah, because the Commissioner's not a prescribed member. So Regulation 18 does not – does not come into effect.

Yes. So when the hearing officer refers the matter, do they generally speaking, refer it to a member immediately above them, or is it the practise that all matters go to you, for example, with all the powers and functions of the Commissioner?---No as a result of a hearing, the hearing officer, if it's out of their powers, refers it and does a report to the Commissioner of the Police, or his delegate.

Right. Do you see, broadly speaking, an issue with determinations, as to sanctions and penalties being imposed by an officer, who's not seen and heard all of the evidence in the course of a hearing?---The – the person who's opposing the determination, is not determining whether the evidence was proven or not proven. That is the hearing officer. The hearing officer is making a recommendation – they're either making their own determination, or a recommendation re penalty, as to the seriousness of the offence, which also takes into account a wide range of other things, including previous disciplinary history and all those type of things.

Sure, like a sentencing hearing almost?---Yes, pretty well.

So the officer who, the delegate if you like, who's ultimately making the penalty in relation to sanctions, is relying only on the report that they've been given from the hearing officer, in addition to those matters that you've just mentioned?---You take the – the opinion, or the recommendation of the report, but you also do look through the file, to ensure that what's in that report, and the findings that were come to, that the evidence was there, for that hearing officer to come to that finding. But ultimately, the recommendation is – not the recommendation, the determination is made on the panel being, not the actual – whether they've proven or not proven, because they've already been proven.

Okay. And do directions ever given to hearing officers about the way they're to conduct hearings or matters, they're to take into account?---Sorry?

Are hearing officers, the prescribed officers, are they ever given directions by more senior officers, as to how they're to direct the hearings?---No.

Where a hearing officer makes a recommendation, it's the case isn't it, I think you've just mentioned this, that the hearing officer will also make a recommendation as to penalty?---Yes that's correct.

And is it the case that higher ranking officers and delegates regularly don't accept those recommendations?---Yes, on occasion.

And where a higher ranking officer, who has delegations of the Commissioner, makes a determination as to penalty, what are the avenues of appeal for the officer? ---After the determination is made by the - - -

After the penalty – yes, sorry?---No, they have ability to make application for an appeal to be heard before the Police Appeal Board.

Is the effect of – rather than the hearing officer imposing a sanction under the powers attributed to them by the Regulations, rather than them dealing with it, when they refer it to a higher officer, that effectively removes the right to seek a review internally of that decision doesn't it?---Yes that's – that's correct.

So the power, or the right to seek a review is removed, and the only avenue for officers is to lodge an appeal notice for the Disciplinary Appeal Board?---Yes that's correct.

Are you aware, how long it generally takes for an appeal to be heard?---At this point in time, it can take anywhere from six months to two years.

So it's the case that there are officers who have had a sanction imposed, who can't have their matter finally determined for up to two years?---Yes, depending on availability of the Police Appeals Board.

And how is the Police Appeals Board constituted and formed?---So the Police Appeals Board, the chair of the Police Appeals Board is a person that's appointed by the minister. They have to meet certain thresholds within the Act. They have to be a lawyer. They have to have five years' experience as other criteria. And then they are selected, or approved, it goes through – through the minister, and gets approved over, through cabinet.

So that's the chair. Who else sits on the Appeal Board?---Yes, so on the Appeal Boards, there's a representative on behalf of (inaudible) Police Force, and also a representative on behalf of (inaudible).

And who does the secretariat services for the Appeal Board?---We have a register – and Appeals Registrar, and that sits within the HR Well-being area of Northern Territory Police, Fire, Emergency Services.

Sure, do you agree that two years is an extraordinary amount of time to have a sanction determined?---Yes I do agree.

And – and would cause members significant stress, in terms of waiting for their matters to be determined?---Yes, I do agree.

And while they're in that period, not in every case, but in many cases, that has the effect of either prohibiting, or inhibiting transfer, promotion, things of that nature? ---Yes, that's correct.

And that also goes with members who are being either dismissed or retired, does it not, in terms of notices being issued by delegates of the Commissioner, that their only recourse is to appeal to the Appeal Board?---Yes, dismissed, when it comes to retired, when they lodge an appeal through part 5, for retirement, as in medical retirement, or early retirement, they're actually not separated from the agency.

They're not?---No.

But they too are at the hands, if you like of the availability of the Police Disciplinary Appeal Board, not the part 5, as the disciplinary matters?--- Yes, the Police Appeal Board is not a disciplinary appeal board, they undertake appeals for a number of things; discipline, promotional appeal, retirement or inability appeals.

Sure. Do you think that that model, that appeal model which relies on the availability, as you've described, of members to sit, that that's something that requires, well a review and significant amendment going forward?---Yes, I do, which is basically a recommendation of Commander Gelliot in his report to try and move away from that Appeal Board process.

Sure. Just since you raised the Gelliot review, in relation to dismissals, you might have heard the Deputy Commissioner's evidence the other day, and I certainly acknowledge that the matters are still being consulted about, but the Gelliot report

recommends a dismissal system whereby a member can be effectively terminated by an assistant commissioner within a seven day period and not have any entitlement to resume their job, even if on appeal, it's found to be harsh, unjust or unreasonable. What are your thoughts on that?---I believe there needs to be an avenue where you do have the ability to separate a member from the police force, which are technically loss of confidence provisions. It might necessarily be just in relation to discipline but a manner of – a number of performance issues, where they're not performing as a member of the police force, but how that would actually work is yet to be fully examined through stakeholder engagement as to the ability to do that or the feasibility to do that.

I guess the biggest concern for members would be, certainly not an issue with ensuring that police officers are operating at a high standard, but even if determinations to dismiss them are found to be unreasonable, that they still have no entitlement to return to their jobs?---Well, if they're performing at a high standard, I can't see why it would even be activated.

Well, that's what I'm saying, do you – you don't see that there's a risk there that members who have successfully appealed a decision to dismiss shouldn't be allowed to go back to work?---To be honest, I haven't really thought about it too much because, as I said it, it's a recommendation of Commander Gelliot. It's something that we don't currently have. A fair process – you need to look at procedural fairness and avenues of whether procedural fairness is in place. So during the process, we would have to determine that we do have the surer levels of procedural fairness for members.

Sure. Just moving on a little bit to, perhaps how you foresee the new system, and I fully appreciate that it's yet to be fully natted out, but I think it was reported – it was reported by Commander Gelliot in his report.

And I should have noted, your Honour, that's BP-16 to the affidavit of Assistant Commissioner Porter in February.

THE CORONER: Yes.

MS OZOLINS: And he reported that it was agreed by all parties that he consulted with that the current complaint and discipline systems do not provide an educative or supportive framework that reflects the realities of the NT Police environment. Do you agree with that statement?---Yes, I agree. And I gave evidence the other day that I said, we need to go to the more modern managerial model to develop our members.

Sure. And that's sort of where I'm going with this line of questioning. And I think Deputy Commissioner Smalpage agreed the other day too that it's desirable to do to a more managerial – or a management-type model. Why is it that that can't be effected right now? Not the whole kit and kaboodle, but if the philosophy has changed towards a more managerial focussed approach, why are we still seeing significant numbers of serious breaches of discipline being progressed?---Because

under the managerial model, it goes up to – if you - according to Commander Gelliot, it goes up to demotion. And the only way you can do demotion currently is through part 4 action.

Perhaps going back a step, at the moment – and we've heard a lot of evidence about remedial advice which I think you'll agree, remedial advice is not a formal term that appears anywhere in the *Police Administration Act*?---Yes, that's correct.

And it's simply a reference to managerial guidance being provided to members to improve their behaviour. So currently, we have the option of providing remedial advice as a management tool. Then separately, there's disciplinary action that can be taken under s 14C of the *Police Administration Act*?---Well, it's still managerial guidance. It doesn't fall under the formal discipline division of the *Police Administration Act*.

Quite right, it's not part of the part 4 and there's no time limit imposed on providing a counsel of portion or something or something of that nature pursuant to s 14C? ---Yeah, that's correct, that is no time limit that applies.

And then in the third and perhaps the most serious tier, you've got serious breaches of discipline and of course, s 79 requires a prescribed member to form a view that it is a serious breach of discipline before commencing action under that section. You would agree with that?---Yes, that's correct.

So we already have the three tiers in a disciplinary model which allows for managerial guidance, something a bit more formal under s 14C, and the serious breaches of discipline?---Yes, we do, but only to a certain level.

Sorry, what do you mean by "certain level"?---Because when you look at 14C, it is manager guidance for matters, and it is written in the Act, matters of a very minor nature, of a minor nature. So, whereas the managerial model that is being proposed by Commander Gelliot is that you will be doing the managerial intervention for matters that are higher than minor misconduct.

Yes, so the Part 4 deals with obviously serious breaches. Sorry, I'm just pulling out 14C, I don't want to mislead you. Yes, so under the new proposed model, well I don't know how it's going to be described, but the equivalent of a prescribed member would have to make a determination where the conduct was something that could be addressed through managerial guidance or whether it's a breach of discipline. That's under the proposed new model?---Yes, under the proposed model, the breach of discipline is, on my understanding, is that it is of those matters of such serious nature that there is requirement to separate that person from the police force.

And that's the view that you take disciplinary action, where there's a view that might - -?---That is – that's such serious nature.

So isn't that sort of akin to what we have now? Any – either of those models

requires a prescribed member to make a determination, or to exercise their discretion, as to whether they're going to manage the officer or whether they're going to institute disciplinary procedures?---Yes, that is akin now, but it's on assessment of the level of the conduct that has been committed. And like I said, it is for the minor natures, which is a breach of – so for instance, you haven't followed a policy for some reason, you have been interacting with a member of the public, you have been rude to that member of the public, you could take action under s 14C to provide that counselling or that guidance to that member under s 14C. Anything above that and in the current process, is you have to enact Part 4.

And under the new model, guidance would be given or disciplinary action would be taken?---That's correct.

So the Gelliot review - - -

THE CORONER: But that lower level would have a much broader spectrum - - -?  
---It would be broader, yes, your Honour.

- - - than be simply limited to matters of a minor nature.

MS OZOLINS: You'd agree though that on either model it still requires a more senior member to properly exercise discretion and have an understanding of breaches that might be more than minor breaches of discipline or which are simply conduct matters that are addressed through a managerial guidance process?---Well it is anticipated once it is fully established how it would work, that there will be categories put within a general order or similar that will describe the types of behaviours that would fit in with that model.

So you do anticipate that there'll be a general order or a standard operating procedure to guide officers in the exercise of those discretions?---Yes, there definitely will be.

Because we've heard over the last few days evidence of – well certainly Deputy Commissioner Smalpage gave evidence to the effect that general orders weren't guidelines, they were orders. But then also acknowledged where sometimes general orders might not be followed and as such prescribed officers to decide whether or not action will be taken against that officer?---Yeah, I remember hearing that.

And he agreed that that could lead to a perception of double standards or inconsistency in the way disciplinary proceedings are applied. Do you agree with that?---Yes, I agree. My understanding of that – and there are times when members will not follow a general order, but it is the circumstances they are faced with at the time that it's pretty well impracticable for them to follow or their actions was reasonable circumstances. But it's all going to be dependent on the assessment of every individual matter.

And I think that's what I'm getting at. How do prescribed officers and a higher ranking officers than senior sergeants, how do they know how to assess those matters and how do members know where the discretion is going to be exercised? ---Yep. So at the moment, so for example, you have excessive use of force. The allegation is excessive use of force. During the incident they had not complied with how they're supposed to put handcuffs on properly as per their training and as per the use of force general order, as in the behaviour of the person at the time was such that they were unable to fulfil or undertake the action that is required to handcuff the person inline with their training and their instructions.

Okay. What about something a bit more intangible. Like we've heard evidence in the course of this inquest about - - -

THE CORONER: Sorry, I don't really understand that example. So you've got an example where you've accepted a reasonable explanation. So where does that fit? ---That would fit then, you'd be given the remedial advice. I'm not quite sure how it's going to fit in with this new model, your Honour. I really do not at this point in time. But under the current system that sort of fits and it's realised as in this is your general order, this is how you're supposed to do it. I understand that you couldn't in the circumstances, but you need to be mindful that this is the proper way.

Right.

MS OZOLINS: But there's no guideline as to how that assessment will be made by prescribed officers?---No, well on assessment, on the circumstances that they review.

The only other thing I wanted to ask about that came out of the Gelliot report in relation to disciplinary proceedings is that one of the comments made was that whilst disciplinary sanctions are often imposed with a view to providing general deterrence and setting a standard of police behaviour, he commented that disciplinary decisions are not published. Is that something that's being contemplated for the future? Obviously deidentified or whatever, but is that something that's being considered? ---It is being considered and it has been done – it has been undertaken before, as in we've done deidentified case studies. However, because of such a small jurisdiction, it doesn't seem to take long for people to know who the persons or the members were, who are the subject officers. So what we are currently examining in line with other jurisdictions, as we're part of a Professional Standards National Forum, to get case studies relevant from other jurisdictions that we use as examples.

Because you would agree that that's the sort of thing that might allay the perception of double standards or an inconsistency in the way the processes are applied? ---Yes, we agree.

And the other thing that I wanted to – sorry, I said that was the last thing but I've just got one more note. Commander Gelliot noted that part of the delay in progressing matters is that he said simple matters are then referred to the Deputy Commissioner for consideration. Why is that? Why are simple matters being elevated?---I can't

say where that comment or where he got those comments from. I'm not aware of any simple matters that have been referred to the Deputy Commissioner, because the Deputy Commissioner acts as a delegate to the Commissioner and only the high level matters go there.

I think we've covered it, but it's obviously, it has been acknowledged that these disciplinary processes that we have now – and also it's not yet really worked out how it's going to work in future – but it's been acknowledged that the disciplinary process itself, and other internal processes, can actually retraumatise officers who've already been exposed to traumatic situations. Do you remember reading that in the report? ---Yes, which is why as part of his recommendations is about the integration of health services and – health and wellbeing and ensuring that there's support mechanisms in place for members.

Do you have any idea what they might look like?---No, I do not at this point in time.

Just in relation to part 5 processes, obviously as you were giving evidence about yesterday, officers are retired for incapacity, or sought to be retired for incapacity from time to time. Does the Northern Territory Police Force keep any data or stats about how many of those inability retirements are on mental health grounds?---They would do but I don't have those stats.

Do you know if those stats are used for any purpose?---I can't tell you. I don't know.

Do you know if support and welfare services are available to members who are being retired for – on inability grounds?---Yes, they are provided that services and we still continue providing those services until at least six months after.

Six months after. I was going to ask you about that. I don't think there was some evidence - - -

THE CORONER: Ms Ozolins, I'm really sorry to ask this but I'm just not quite sure how this is relevant to the inquest.

MS OZOLINS: Well your Honour, I wasn't going to take that any further, but it goes to the whole review of the disciplinary process and the welfare of members - - -

THE CORONER: It might but it's delving into detail which is not arising in this inquest.

MS OZOLINS: I won't take that matter any further, your Honour.

I just quickly wanted to ask you about the transfer and promotion process that we've heard some evidence about. And the – I think there was some evidence from - - -

THE CORONER: I suspect this is also not – maybe it arises in this inquest, if you can - - -



MS OZOLINS: Well your Honour, we're talking about robust processes and the ability of particularly sergeants and senior sergeants to do their job.

THE CORONER: Sure.

MS OZOLINS: It has been raised in the inquest and as I understand it, Assistant Commissioner Porter is responsible for the promotion and transfer of members and also oversees the college which is responsible for training members.

THE CORONER: Sure. So if we're talking about – you're identifying how sergeants (inaudible) or promoted to those positions?

MS OZOLINS: Yes. And there is a general order which I did want to introduce, because I don't think it's on the brief. And it is the general order relating to promotions and transfers. I don't need to go to it but I would ask that counsel assisting give consideration to adding it to the brief.

Just briefly, Assistant Commissioner, it's the case isn't it, that under that general order for promotions and transfers, it's the Deputy Commissioner whose responsible for making determinations on transfers and promotions?---No, not all the way, not always.

Do you want me to take you to the general order?---Yeah, so because you're not identifying ranks here, because we also have transfer promotions for non – for commissioned officers, and that goes to the Commissioner.

Sorry, I was talking about non-commissioned officers, and the – the document does say that.

I did send it through the other day, and perhaps that could be –

Sorry, your Honour, I didn't anticipate spending too much time on this. It was basically just to establish the basis on which non-commissioned officers may obtain transfer on promotion.

And if – perhaps specifically, from general order 54 of that document.

So sorry, specifically at 54, "The Deputy Commissioner, people culture and capability, has responsibility for making determinations on the transfer of members, taking into account recommendations, and separately making a determination on promotion of members, taking into account recommendations of a panel." And you agreed that there is a panel for promotions and a panel for transfers?---Yes, that's correct.

And I think the general orders make provision for you, as the Assistant Commissioner, to chair those meetings, and to be responsible for the recommendation made to the Deputy Commissioner?---Can you take me to the

sections, because it doesn't make responsible for the chair, it makes me responsible for determining panels.

Sorry, can you just say that again? The general order which says?---Provides responsibility to me to determine panels, as in - - -

Yes I can?---The making of a panel.

General order 65. And there's a discretion – you have a discretion to choose the other panel members, and obviously a right of veto in overriding that - - -

THE CORONER: The chair person does. The Assistant Commissioner can appoint the chair person, and then the chair person has the discretion to choose (inaudible).

MS OZOLINS: Yes, and the Assistant Commissioner may override that decision.

THE CORONER: Yes.

MS OZOLINS: Right.

So is that the way it ordinarily works? That you appoint a chair person, and there's a panel that decides all of the things that need to be considered and then a recommendation is made to the Deputy Commissioner?---Yes, so with sergeant promotions, I appoint a Commander as the chair of the panel. With recommendations to the chair, as to the availability of people who are available to be part of their panel, and to take into account also – you know, to have gender – a gender ratio on the panel. And also if there's any Aboriginal applicants, that there needs to be consideration taken to include someone on the panel, who has that – who has Aboriginal background, or ATSI background. So that occurs with sergeants. With senior sergeants, a decision was made, including me as part of the decision making, that senior sergeant panel will be chaired primarily by Deputy Commissioner, myself, and then there's Executive Director of CREC that's Community Resilience Engagement Client your Honour, and the Director of Human Resources and Well-being, and to keep the same panel, just for consistency of decision making.

Do you see an issue with the Deputy Commissioner sitting on a panel that makes recommendations to him, for final determination?---No, he has not been signing off on those recommendations. It either goes to the other Deputy Commissioner, or the Commissioner of Police. And he is just the chair, there are four panel members, and decisions are made on selection through the unanimous decision of the panel.

I don't mean to – I don't mean to appear critical, but that's not in accordance with what the general order says is it?---No the general order says "at a minimum", the structure, so that indicates to us, and which we have been using that, it can be above the rank of Commander.

THE CORONER: Well it says "Commander or above"?---Yes.

MS OZOLINS: Yes. So my question is in terms of making a recommendation to someone to make a final decision, when they're sitting on the panel, is that something that causes concern?---Yeah, but he's not signing off on the panel decision. He's the chair. So he's making a recommendation to another senior officer, as in – and it's generally the Commissioner.

The only other thing I wanted to ask you about, the sergeants, it's just a general question. Arising from some of the evidence we've heard throughout the inquest, that the sergeants have a huge and varied work load. And from you know, the various discussions, it seems like a lot of their work is administrative. And we've heard that they are responsible for managing rosters, and managing resources, and all those sorts of things. Which some sergeants, have given evidence, has caused them to be effectively desk bound, rather than being out on the road with their troops. Do you see that as being something that can be adequately addressed through the training programs that are being introduced?---I'm not quite sure, and I'm not quite sure which sergeants you're talking about. All sergeants have specific duties, so for example, a sergeant in charge of patrol group, or front line, for that shift, they don't have responsibility for rosters. They have actually an administrative sergeant in the station who has responsibility for rosters. So you would need to provide me further clarity as to what the actual burden is for each specific position.

All right, maybe I'll leave that. I just – two other things very briefly. Alcohol and drug testing, and the development of a policy in relation to that has been discussed in the inquest. And you'd agree – well, there has been a collaboration of a number time, do you agree that an appropriate policy is something that needs a welfare response as opposed to a punitive response?---No I do not agree. I agree that – to welfare response if people are having issues in relation to prescription drugs, or similar, but if someone is taking drugs that are illicit and committing offences, it is not a welfare issue. It is – they're breaking the law.

Okay. Now feedback, as far as my client's concerned, has been provided in relation to the draft, and I think there was some evidence briefly, the other day, about the importance of ensuring that a policy appropriately takes into account the – the situation of members at remote stations?---Yes that's correct.

And do you have any thoughts on how a policy which prohibits officers from either consuming alcohol, or for example, taking prescription medication, can be dealt with in circumstances where they have to be reasonably available, the whole time when they're in the community?---Yes we – excuse me, your Honour, we have not completely worked that one out yet. We are still in discussions and getting information from the other jurisdictions who also have PR police officers in remote locations. At this point in time we have not fully determined exactly how it will work. But as I previously stated in my evidence, the draft policy or general order as it will be, because it will be a general order, will be going back to the Northern Territory Police Association for further feedback once we have a position on that.

They're all my questions. Thank you.

THE CORONER: Thanks.

Other questions? Mr Officer.

MR OFFICER: Your Honour, I'll be brief.

XXN BY MR OFFICER:

MR OFFICER: Assistant Commissioner, as you know my name is Luke Officer and I appear for Constable Rolfe. There's just three topics I want to cover with you. The first is one issue arising from (inaudible) November 2019. The second is body worn video. And the last of that topic is the Ryder matter (inaudible). Unlike Commissioner Smalpage, you were in fact in the Northern Territory Police at the time when the incident occurred (inaudible)?---Yes, I was. I was Commander at the college.

One of the matters that is of significant concern to my client, at the time and certainly now, was the rapid speed at which he was identified as the police officer who pulled the trigger on the fatal shooting. Are you aware of that?---I'm aware that's been raised, yes.

Identified within the media very quickly. Did you in your capacity with the Northern Territory Police or are you aware that enquiries was made as to how it occurred so quickly?---No, I've had no involvement or unaware. I had no real involvement with the matters pertaining to Yuendumu until I came back from long service leave in mid June 2020.

I'll move on. In terms of the body worn video generally speaking, your evidence was that 600 cameras were rolled out about September 2016. If you could just take up exhibit 24 quickly. Exhibit 24 is the table that was handed out?---Sorry.

Have you got that?---You just said exhibit it 24, I wasn't quite sure.

Now you'll see in the years 2017, 2019 and '20, (inaudible) is quite a high number of (inaudible) non activation line body worn issues not activated frontline?---Mm mm.

Quite high numbers there?---Yes.

Did the organisation – and as you sitting there today – do you have any evidence or appreciation why the numbers were so high in all those years in terms of explanations from members who didn't activate or is that just raw data?---No, that's just the raw data. I haven't really delved into the actual reason why back then, other than it was still a fairly new process for police officers. It's something that police officers never had before in the Northern Territory.

So they were given custody to them and it's something they had to take the time to get used to?---That is my understanding, but I don't have the definitive answer, no.

What we do know, I think you said in your evidence earlier this week, that at least in the leadup to 9 November 2019 Constable Rolfe demonstrated an increase and better use of body worn video despite prior matters where he hadn't?---Yes and that was highlighted by Superintendent Vicary when she undertook audits or did tests, audits for a better term.

And of course we know that on 9 November 2019 Constable Rolfe did indeed have his body worn video activated?---That's correct.

Just in terms of the Ryder matter, it's the third and last topic. You've given some evidence about what seems to be, in my words, tell me if they're wrong, a discretion used at Crime and Command as to whether or not to refer a matter to the (inaudible)?---Yes.

And you take into account, for example, the porosity of evidence?---Sorry?

You take into account those decisions the porosity of evidence available to you?---Yes.

The reliability of the evidence, if there's inconsistencies between witnesses?---Yes, that's correct.

And you're aware (inaudible) Judge Borchers, one of the criticisms at which he drew a conclusion or in his view, a finding that Constable Rolfe had lied, was that he couldn't accept that Constable Rolfe had been punched in the hallway or that he had been scratched on the eye as Constable Rolfe deposed to both in his evidence and his statutory declaration?---Yes, that's correct.

And you in your first statement at par 47 reference specifically one of the matters you take into account is the fact that Constable First Class Chatterton gave a statement 28 March 2018 on the brief – that's 3144 – that he has seen immediately after the incident involving Malcolm Ryder that Constable Rolfe had a mark on his head and in your words here, that supported Constable Rolfe's account that he was scratched or pulled in the interaction with Mr Ryder and received a mark in these circumstances?---Yes, that's correct.

And that's quite significant evidence, isn't it?---It is, yes.

And why is that significant, in your view?---Because it's current, it's contemporary, it's at the scene and immediately after the incident.

And it corroborates Constable Rolfe's version?---It does, yes.

Are you aware that Constable Chatterton was not called at the trial of Malcolm Ryder?---Yes, I am aware.

Did you know why that decision was made?---No, I do not.

Did you speak with the prosecutor who made that decision?---No, I did not.

That's a pretty significant matter that was absent the evidence before the judge, wasn't it?---Yes, I consider it was.

AN UNKNOWN SPEAKER: Your Honour, just before the counsel assisting resumes her questions, Mr Officer and I have reached a truce negotiated by Mr Freckelton – Dr Freckelton I should say, and I withdraw the question.

THE CORONER: Yes.

Dr Dwyer.

DR DWYER: Thank you, your Honour.

Assistant Commissioner, do you know where or not Officer Chatterton wasn't called or was a forensic decision made to tender his statement at the hearing?---I do not know.

Did you make any enquiry as to whether that was done?---No, I did not because I was not part of that investigation.

So in response to Mr Officer's question about whether that was a pretty significant oversight, you can't say, can you?---No, I can't definitively.

Well in response to Mr Officer's question that that was a pretty significant issue, you can't say, can you, without knowing that?---No, not without knowing it. But his evidence is pretty critical as in he provided direct evidence of his observations at the time.

And do you know whether or not his statement with those observations was tendered and available to Judge Borchers?---No, I do not.

So you don't know whether or not the prosecution made a forensic decision not to call him?---No, I do not.

I'm going to stick with this questioning about the Malcolm Ryder incident. You were asked some questions by Mr O'Brien about the decision of the police not to refer the investigation of perjury to the DPP. I'm not suggesting to you in these questions, Assistant Commissioner, that Constable Rolfe or others should have been charged with perjury. I'm not suggesting to you that they would have been convinced if they had been charged. The questions I have for you are in relation to the issue of independent oversight?---Yes.

That Mr O'Brien was asking you about. Judge Borchers in making his decision on 9 May 2019 made findings that three of your officers had given evidence at times

that were not supported by the evidence available, the objective evidence.  
(inaudible)?---Yes, I agree that.

There were damning findings made by Judge Borchers, weren't there, in relation to the credibility of three officers, particularly Constable Rolfe?---He made those comments in his summation, yes.

It's very significant, isn't it, given your experience in the Northern Territory, for a judge of a court in the Northern Territory to make findings adverse to the credibility of police officers?---Yes.

They should in terms of oversight of your officers, be given significant weight, shouldn't they, the findings of a judicial officer?---It needs to be looked at very carefully, yes.

The evidence available to Judge Borchers included the following, didn't it? First, body worn video from some but not all of the officers involved?---Body worn video from one officer.

Contrast between the evidence of the officers involved and the available body worn video?---Yes, that's correct.

Contrast between the evidence of the officers involved and some mobile phone footage that had been taken by a civilian?---Yes, the mobile phone footage was footage outside the residence.

Yes. But in terms of assessing the credibility of the witnesses, civilians and your officers, he had available to him, didn't he, a contrast between that footage and the evidence of the officers?---He had it available to him, yes.

And that could be relevant, couldn't it, in terms of assessing the credibility of the officers?---Yes, that's correct.

And he also had the advantage, didn't he, of assessing witnesses giving evidence upon oath?---Yes, he did.

You're aware, aren't you, that in courts around Australia, people can be convicted of very serious offences where there is oath-on-oath and a requirement of a judicial officer to assess credibility?---Yes, I'm aware.

And that juries perform that job as well, don't they, in terms of assessment of oath-on-oath credibility?---Yes.

And did you take into account in placing weight on the findings of Judge Borchers that he had an advantage that was not then available to police investigators of assessing oath-on-oath the witnesses who happen to be Aboriginal and the police officers?---Did I take it into account?

Yes - well I withdraw that, do you accept that police investigators should take into account the significant advantage of - - -?---Yes, no, I agree.

The judge was entitled to take into account the evidence he heard on oath from police officers and the way in which it contrasted with the phone footage outside the house in terms of assessing their credibility generally, wasn't it?---Yes, you could take that into account.

And did you take that into account when you were looking at this evidence subsequently?---Yes, I did.

Judge Borchers found that Police Officer Bonney demonstrated ill-will, irritation and incredulity that the occupants didn't have a key to the house. He said, "She was plainly rude and abrupt to Rebecca Hayes and Malcolm Ryder and they were neither very hostile, which Bonney alleged, or aggressive, as Constable Rolfe alleged." That was relevant, wasn't it, in terms of an assessment of credibility?---That was his assessment.

Did you make the same assessment?---No, I did not.

Did you not think that they were rude or aggressive to the occupants?---No, I do not. And when you take into account the footage from Ms Hayes, they were referring to that when asked about, did he have keys to the house, Mr Ryder showed his pockets and said that he didn't have keys. There is no capture of the conversation before that and Mr Ryder, at that time, he didn't just say, sorry I don't have keys. He come out, nup I don't have. He was very aggressive. He was pretty aggressive when he said he did not have keys and pulled out his pockets. So there had to be some conversation prior to that footage which is not captured.

Why is it not captured?---I do not know.

Did you think that Judge Borchers was entitled to take into account the fact that it wasn't captured in assessing the credibility of police officers who had an obligation to record on body-worn video anything of significance?---Plus also when I look at that footage, the police officers said that they were sworn at by Mr Ryder. I looked at the footage and I've looked at the transcript, where Mr Ryder has, I think, called Constable Rolfe a "fucken dickhead" and a "fucken idiot", and also said rocks should be thrown at them.

Is that captured on the body-worn video?---Yes, it is - on the phone, on the phone. So, that's captured on the phone.

Sorry, who do you think said that?---Mr Ryder said that and Ms Hayes – Mrs Hayes said that as well.

Excuse me. That's a matter that we'll check ourselves, Assistant Commissioner. This is what Judge Borchers goes on to say, "Prior to this, their interactions -", and he's talking about Constables Bonney, Rolfe and Zendelli, "had been less than civil



to Ms Hayes and Mr Ryder. In fact, each had been rude towards Ms Hayes and Mr Ryder.” Assistant Commissioner, I’ve watched that footage myself. It’s an assessment that I’ll invite the court to make that they were rude. What did you think when you got - - -

MR OFFICER: Your Honour, I object to counsel assisting giving evidence from the bar table.

DR DWYER: It’s not evidence. I’m asking - - -

MR OFFICER: Well, you’re saying he watched and this is what you say (inaudible).

DR DWYER: All right.

In fairness to you, Assistant Commissioner, I anticipate submitting to her Honour that an objective assessment of that footage shows officers being rude to Aboriginal civilians who are being asked questions. What is your assessment of that footage? ---My assessment is Constable Zendelli was rude. I was unable to make that assessment re: Constable Bonney and Constable Rolfe.

Judge Borchers says, “I cannot accept the evidence of either Constable Rolfe or Constable Zendelli when they say they saw punches thrown by Mr Ryder.”

THE CORONER: Just before you go there, sorry to interrupt. So, I haven’t seen the footage. I don’t know what’s in it. But were Zendelli, Bonney and Rolfe together when you say Zendelli was being rude?---No. No, your Honour, Zendelli, in the initial interaction, was sort of away from them, as Zendelli is – when they entered the house, Zendelli pushed Malcolm Ryder outside the house, and she was not very civil when she was telling him to get out of the house.

THE CORONER: So there could have been a reaction to her behaviour?---There could have been, yes.

Which might account for anything else that is done, like turning out pockets?---No, the pockets was before that, your Honour.

I don’t know the order.

DR DWYER: Has Officer Zendelli been given any remedial advice or any other sanction in relation to being rude in those (inaudible)?---No, not that I’m - - -

Pushing an Aboriginal civilian out of the way?---Not in relation to that matter.

Why not?---Because the investigation was completed and we just did not go back and provide that advice.

Should you have done?---Yes.

Judge Borchers said, "I cannot accept the evidence of either Constable Rolfe or Constable Zendelli when they say they saw punches thrown by Mr Ryder. Neither Constable Lorraine nor Durranis (?) saw any punches thrown and both were closer to Ryder than Zendelli. A body-worn video shows no punches being thrown. Did you agree with that assessment?---Yes, I agree.

It's on that basis, or part of it, that he says, "Constable Rolfe and Zendelli's evidence is wrong and is a pure fabrication." That is an extremely serious finding for a judge to make. Do you agree?---He made other assessments to come to his finding.

He says this – I'll read the whole paragraph,

"I cannot accept the evidence of either Constable Rolfe or Constable Zendelli when they say they saw punches thrown by Mr Ryder. Neither Constable Lorraine, nor Durranis saw any punches thrown and they were both closer to Ryder than Zendelli. A body-worn video shows no punches being thrown. Constable Rolfe and Zendelli's evidence is wrong and is a pure fabrication."

That's a very significant finding from a judicial officer in relation to the punches thrown?---That was his finding, yes.

In terms of assessing the credibility of your officers versus the civilian witnesses who happen to be Aboriginal, can I ask you to consider the evidence of the credibility of Mr Ryder. He was reviewed by Dr Nick Tyliss at the Alice Springs Hospital shortly after 3:15 pm on 11 January 2018. Were you aware of that?---No, I wasn't.

He gives an account to the doctor consistent with his account in the hearing, complains of being forcibly arrested, even though he was compliant. He says his face was – Malcolm said he complied, but the police officer forcible hit his right face against the floor and punched him to his left face. That was the same account that Mr Ryder gave to Constable Campagnaro as she was then when he was interviewed under caution. It was the same account that he gave in court under oath. And he gave evidence in circumstances where the judge had an opportunity to assess his credibility. Do you think that's a matter of significance when you take into account the comments made by a judge?---There's no doubt that he had his face hit on the floor and he was punched, and that is the evidence of Constable Rolfe. There is no doubt that that did not occur.

I think you can probably hear Mr Coleridge there, Constable Rolfe's account was that he fell to the floor and hit his head?---No, Constable Rolfe's account is he actually tackled him to the floor.

You made – do you accept the comments of Judge Borchers that Constable Rolfe and Constable Zendelli were not telling the truth when they say they saw punches thrown by Mr Ryder?---No, I don't accept that. It's his summation. I don't know what was in the mind of the members. All I know is, it happened within mere seconds. You have two people coming into the room aggressively and they say in their evidence, even Mr Ryder says in his evidence, that he did come in aggressively.

The officers have reacted instantly. I don't know if you've ever been in a situation like that, but you do not – when arms are going everywhere, you don't recollect completely everything. And then in Constable Rolfe's evidence, he then indicated when he did get punched to the head, it wasn't actually in that bedroom, it was down the hall, when he was pursuing Mr Ryder.

And you made an assessment that he was just mistaken when he said earlier that Mr Ryder had thrown a punch at him, is that right?---No I didn't say that about it. I said, in his mind, he thought, I can't say. And it was an assessment of a judge of his time, and I'm not disputing the judge's assessment of that, at that time.

Was Judge Borchers – I withdraw that. Judge Borchers was entitled to take into account, wasn't he, that police officers, who were supposed to turn on their body-worn video, had not, in terms of assessing their credibility?---I don't know if he took that into account.

You're entitled to take that in to account, you are, aren't you, in making an assessment?---Yes I am.

And Judge Borchers was entitled to take it into account?---But that is not in his summation, that he took that into account.

What Judge Borchers didn't know, is that Constable Rolfe, at that time, had a history of not turning on his body-worn video when he was supposed to, is that something that you took into account when you were making an assessment?---No I did not.

MR OFFICER: I object, your Honour. How are we going to speculate, well it didn't have, or should – shouldn't have - - -

DR DWYER: I think the question's been answered.

THE CORONER: It's not speculation, it was a direct question and answer in relation to what was being taken into account.

DR DWYER: In relation to an assessment of whether this matter should be sent – should have been sent to the DPP for an independent assessment of whether perjury charges should be laid, did – did police give any consideration to whether or not the two officers, Zendelli or Rolfe, have any history of excessive force?---I can't tell you, because I was not involved in that process.

Do you know whether or not in that process, any consideration was given to whether either officers had previously been investigated for not telling the truth?---I can't tell you, I wasn't involved in that process.

Do you think those matters are things that should be taken into account, in assessing whether or not the investigation should go further?---Yes, and that's all part of considerations of the background of the member, and everything should be taken into account.

It was put to you by Mr O'Brien that in December 2019, when Superintendent Bryson was reviewing this incident, it should have been sent to the DPP, as an objective oversight at that time. What was your answer to him then, do you agree with that? ---Yeah, I agree that it should have.

Is it the case that Superintendent Richard Bryson had refused to sign off on a charge for Constable Rolfe in November 2019, when he was charged with murder?---I do not know.

If that was the case, do you accept then that Superintendent Bryson, might not be seen to be objective, when asked to review the perjury charge a month later? ---I don't know if you could say that, because like I said, Superintendent Bryson is a qualified lawyer. He's been in charge of prosecutions for a number of years. He's dealt with the Director of Public Prosecutions for a considerable time. I think he has the skills and experience to make an assessment.

Do you agree that the police oversight mechanism have to not only be fair and objective, but also be perceived to be fair and objective?---Yes I agree with that.

Do you really think if there's an officer who is involved, or is asked to make a decision in relation to the charging of Constable Rolfe, for the most serious crime on the criminal calendar, a month earlier, he should really be the one, determining whether or not a previous – and refuses to – to charge, should be the one to make a decision about a perjury charge a month later. Do you not have a problem with that?---Well like I said, I do have problem, and myself, I would have referred it to DPP for an opinion.

I want to go back to the police response in the period between the Ryder incident and Kumanjaya's passing. Have you read the statement of Virginia Reid in this coronial?---No I haven't.

It appears at 7-115. Do you know what position Superintendent Reid held in the police force, as at June 2019?---No I do not.

I'm just going to turn to her statement for a moment, and let you know. Superintendent Reid had oversight of various complaints against police, involving Constable Rolfe. She has indicated in her statement that she was working with Professional Standards Command. She was at the relevant time, the Divisional Superintendent for the Ethics and Integrity Division, having oversight of investigations into complaints against police investigations. Around June 2019, so about four months before Kumanjaya was killed, she indicates at par 10, she spoke to Commander Curry and Superintendent Vicary during a Command Management Team meeting. She advised them that she was reviewing a number of complaints referred to her from the Ombudsman's Office, where NAAJA had raised concerns with the complaint outcomes, and that it was likely they would be re-categorised and further investigated. Do you follow so far?---Yes.

She said "I further conveyed that I was concerned about Constable Rolfe's non-adherence to the body-worn video policy, and that this was the third occasion that I had become aware of people fleeing from him, and injuries occurring when apprehended"?---Yes, that's correct.

Do you know what response Superintendent Vicary gave when she was interviewed about this?---No I do not.

In February 2020, in her interview,

for the benefit of the court, 7-133 at page 22,

Superintendent Morgan said "It's apparent Rolfe had a number of complaints, however he was not removed from the IRT." And Vicary says:

"Yes, so I guess we tend to that with common sense. Because as I said, you know, at one point, every time we did an arrest job, members were getting complaints. So I guess we would look at that, if there was a serious complaint about an assault, or something of a really serious nature, then we would obviously look at standing someone down. But for these lower level assault complaints, use of force type ones, it's not something that would have been deemed to be necessary to do that."

And in fact, her evidence is, that there was nothing of substance done, to advise Constable Rolfe in relation to his behaviours. Between June, when it was raised by Superintendent Reid, and November 2019, when Kumanjayi passed away. That was a dereliction of her duty wasn't it?---Yes, from what you're saying it is, yes.

Superintendent Nobbs gave evidence that there are a range of options available, in those circumstances.

This is transcript 3-072.

He said a multitude of things, ranging from welfare intervention for Constable Rolfe. Remedial support. Placement in an administrative position when – while investigated. A first-person management plan. All sorts of things short of more significant oversight – I withdraw that. All sorts of things that would have related to advice, support, oversight, review, that were not done by police during that four-month period. That is a significant failing isn't it?---Yes, I believe so.

Are you confident, that with the reforms that have been implemented by Northern Territory Police, after Kumanjayi's passing, the same situation wouldn't happen?---No I'm not confident with what we've put in place at the moment, but with the things that we're putting in place to compliment it, I fully have confidence that we will have mechanism in place to be sure – or not sure, you can never be sure, to mitigate any such occurrence reoccurring.

What's the timeframe for – for those reforms being implemented to?---It's varying. It's stuff that's already been implemented, being implemented now. Things like the Gelliot Review, especially when it comes to legislative reform, which is not a short term turn around, so those longer terms, such as the complaint and discipline system, as in how we manage that, is longer term. But that doesn't mean we don't have systems in place already though our, you know, our SME initiative at the college. The mechanisms we have in place at the Ombudsman's Office in relation to flagging of matters. As well as timelines that are flagged. We have reduced the chance for things to slip through the gaps, where we can identify, at an earlier stage, to identify if there's an issue with a member that needs to be addressed. Which is why we're also really pushing ahead from an early intervention perspective, so that we have that mechanism in place to give us those indicators.

Do you – you heard from Ms Ozolins concerns about – from police about the way in which the complaints system has worked previously - - - ?---Yes.

- - - in terms of inconsistencies?---Yes.

It's important for police to have confidence in a fair and objective complaint system? ---Yep it's important for the community and the police to have that confidence.

And civilians, particularly Aboriginal persons who've made complaints previously, that might not have gone anywhere, need to have some confidence, don't they, that the police will take complaints seriously, and follow them in a timely way?---Yes. No, I fully agree, because for – to have that trust and to ensure that people are being heard and that they believe that they have a proper system in place, you have to engender and build that trust and have that trust.

Thank you.

Nothing further.

DR FRECKELTON: I've just got the one question, your Honour. I'm conscious of the time.

XXN BY DR FRECKELTON:

DR FRECKELTON: Assistant Commissioner, counsel assisting has just pointed out to you an aspect of unsatisfactory discharge of (inaudible) responsibilities. And then she followed up with asking you about whether that would be likely to happen again today. What has been done to deal with supervisors who are not as attentive as they ought to be in relation to their supervision?---So those who aren't attentive and it being identified is that we take action in relation to those supervisors from part – remedial advice or – from remedial advice up to part 4 action. But also as a development opportunity for them we have also like implemented the sergeant supervision development course. We've also commissioned the Australian Institute of Police Management where we also have a future developer – future leaders development course which they run, which is from the technical skills of dealing in

complex environments, having those difficult conversations. So more from a leadership perspective. So we have a five day workshop with that which is also followed up with those participants. There are further follow ups with the APM where they do have face to face follow ups of how they are going, how they are applying it in the workplace. So we've run one of them. We've got another one due to start just in a couple of months, but we're going to roll them out across all the supervisor rank as well. We have the subject matter expert reviewing the use of force incidents where the assessment by a supervisor is one of the key components of that assessment. And if they're not meeting the standards it gets referred to the Professional Standards Command to either go out, if it's only a real minor matter, to go back to the Command to deal with from a managerial perspective. Or if it's misconduct, then from a disciplinary perspective. So there are a range of things that are being put in place or have been put in place.

And on occasions when supervisors have not supervised adequately enough, has disciplinary action already been taken?---Yes, there has been a number of occasions.

Thank you, your Honour.

THE CORONER: Yes, thank you for coming back over a number of days to complete your evidence. That's appreciated. And we can adjourn until - - -

DR FRECKELTON: Before we arise, just a formality. I've let counsel assisting know that (inaudible).

THE CORONER: Certainly.

We'll adjourn.

WITNESS WITHDREW

ADJOURNED AT 4.43 PM TO 9.30 AM THURSDAY 9 MARCH 2023