_____

THE SUPREME COURT OF

CORNERS 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 12 SEPTEMBER 2022

(Continued from 09/09/2022)

Transcribed by: EPIQ

THE CORONER: Yes, Dr Dwyer.

DR DWYER: Good morning, your Honour. Your Honour, I propose to address you on a number of issues this morning but I hope that what I am about to say will, in fact, save a lot of unnecessary argument and confusion. So I might deal firstly with what has loosely been termed "A discussion of scope or the issues that surround the issues list".

THE CORONER: Yes.

DR DWYER: It is clear, I hope, that these are inquisitorial proceedings. That means they are not adversarial. They are not inter partes litigation. There is no indictment like there is for a criminal matter and there are no pleadings like there are for a civil matter. Unlike in civil or criminal proceedings, the only issues in an inquest are those that are defined in a *Coroners Act* and that really is whether and if so in what terms a Coroner may, or in some cases must - make a finding, comment or recommendation under ss 26, 34 and/or 35 of the Act, so your findings and recommendations.

The subject matters of many of those provisions are broad, with indefinite boundaries and that can create practical difficulties in inquests such as this, given the size and complexity of the inquest brief. Because of that, a practice has developed in some large or complex inquests like this, where counsel assisting produces an issues list and indeed, I can say in New South Wales every inquest, whether it runs for a couple of days or a week, a practice has now developed of distributing an issues list. Usually there are four or five issues on the list and this practice has been held to be appropriate, although there is no requirement for it it is, in effect, a courtesy from counsel assisting.

As your Honour noted in an earlier ruling relating to the application for leave to appear by the Northern Territory Police Association, the issues list is designed to encourage discussion amongst the Coronial team and parties in a way that gives some structure to the inquest, but it is not and does not purport to be determinative of the scope of the inquest. An issues list can neither enlarge nor constrain the jurisdiction of a Coroner. It is counsel assisting's document, not your Honour's, with respect.

And, your Honour, it might be convenient to tender an email where those issues were set out to try and assist parties, particularly those who may not have had much experience of an inquest, as to exactly what the nature of that document is. Mr Coleridge sent this email on 11 September to all lawyers involved in these proceedings and he noted, for example, that the issues list is a working document authorised by counsel assisting that may be the subject of change as the inquest progresses. It purports only to identify from counsel assisting's perspective questions that appear likely to arise for consideration at the conclusion of the evidence and that seemed from your counsel assisting team to be necessary.

I tender that email.

THE CORONER: Thank you. Do we know what the next exhibit number is?

DR DWYER: Exhibit 20 is currently, your Honour, and I will return to the exhibits list shortly.

THE CORONER: Thank you.

DR DWYER: Unfortunately, despite counsel assisting's express and written advice to the parties that the revised list should not be construed or read in an unduly technical manner, as exclusive matters not expressly noted, many of the interested parties continue to read the document as if it were a statute or a pleading and moreover, despite counsel assisting's express and written advice to parties that the document doesn't purport to define the scope of the inquest and counsel assisting is not asking your Honour to adopt that document, parties have filed submissions on the basis that it would be appropriate for your Honour to determine at this preliminary stage the entirety of the scope of the inquest.

So to be clear, my submission is that your Honour should not rule on the scope of the inquest. The Act does not require you to and there are good reasons to think that it would be inappropriate and premature and as it seems, confusing, to try to determine all the questions of what evidence can and can't be received as a block and at the beginning of the inquest.

No doubt, your Honour, there will be other evidence that is forthcoming in the course of this inquest and indeed, some parties have foreshadowed that there will be further reports that we still haven't received.

As the Full Court of the Supreme Court of the Australian Capital Territory held in a similar context in Doogan - D-O-O-G-A-N, the issues merely reflect the range of issues which counsel assisting intended to submit should be dealt with by the Coroner and the mere admission of evidence that appears to canvas a range of issues extending beyond those specified in the Coroners Act does not demonstrate any error of jurisdiction.

The court went on to say;

> Indeed, a liberal approach to the potential relevance of evidence may sometimes be appropriate, particularly in the early stages of an inquiry when the Coroner is still seeking to identify what issues are likely to arise.

And in this inquest, although your Honour has received material in the brief of evidence which is suggestive of certain issues likely to arise, including, for example, the lengthy Proctor Report, which canvasses the issues that were outlined in the opening.

In spite of that it's still not clear what issues entirely are likely to arise and it is premature to determine that.

To the extent that Mr Edwardson KC has raised objections to particular evidence, your Honour can and should rule on those objections, but your Honour should decline to rule in any way on the issues list. And your Honour should instead rule on any objections to evidence if and when it is proposed that that evidence will be adduced. Before I come to the evidence, however, I just want to say two further things about the issues list.

And one is, we are still endeavouring, of course, throughout the course of this inquest, to explain to the family and community and to all Australians who are interested in these proceedings what this inquest endeavours to do and the sorts of issues that we will be looking at.

There seven broad issues on the list that was originally distributed. I am very pleased to say that there is no dispute in relation to any of those seven broad issues and Mr Edwardson kindly made that clear last week. So, to the extent an issues list should go on the website or now be further translated to explain to the community what sorts of issues are likely to arise.

I would suggest that those seven broad issues are appropriate. And I understand there to be no objection from my learned friends about that. Just by way of further example about issues that may arise and the nature of an issues list, in May on the list that all parties at that stage agree to be appropriate, counsel assisting specifically referred to the issue of systemic racism. It's number 36 on that original list.

And it was a question posed, "Is there any evidence of systemic racism or cultural bias in the Northern Territory Police Force or some sections of it? How does the Northern Territory Police Force identify and guard against racism?" There was no objection at all to that issue taken by any party, including the Northern Territory Police Force or Constable Rolfe, and it was anticipated that that would be looked at.

At NAAJA points out, in their submissions and the submissions of learned senior counsel and junior counsel, the possibility of systemic racism or cultural bias is actually raised in the report of Superintendent Proctor and that's as noted in the NAAJA submissions at par 32, the Coronial memorandum of Commander Proctor, which is in the brief at 01/001, the final report at final report at pages 165 to 167.

There has been no objection to aspects of that report. And I just interrupt myself to note this, your Honour. Often, there is suspicion that police are not able to conduct robust and independent investigations of their own officers and I note that counsel for NAAJA have commended the way that issue was approached openly in the report.

The report flags effectively that there may be evidence that is relevant to that issue. Certainly, it is an issue that is system bias, or system racism is an issue that has been looked at in other inquests.

For example, the 2020 inquest into the death of Tanya Day, who tragically died whilst she was in police custody. And in 2021, a New South Wales' inquest into the death of a Wiradjuri woman, Ms Williams, or died of septicaemia at Tumut Hospital, where Coroner Grahame identified issues of systemic racism.

So, the revised issues list was distributed last week to try and put parties' minds at rest revises the questions that were asked and doesn't specifically refer to systemic racism. That has been of some concern to NAAJA and to parties, including family representatives in Karumba. Now - - -

THE CORONER: Sorry to interrupt, I note that you have mentioned on a couple of occasions issues, what you're really referring to though, as I understand it, are some questions that might be raised in relation to the seven broad issues.

DR DWYER: Precisely, your Honour. Thank you. And indeed, I apologise to your Honour, because it's that confusion between the questions and the issues that might not have been helpful.

NAAJA was concerned that focussing on negative attitudes of involved members, which is how those questions were rephrased would risk losing sight of broader issues of the sort to which your Honour's remedial powers of recommendation might be properly directed.

So, might I confirm then to put your mind at rest that the seven issues, the broad issues on the list may well allow your Honour to look at issues of systemic bias as part of your investigation if it is raised on the evidence.

If from the evidence, your Honour considers that systemic racism is relevant to your decision-making under the *Coroners Act*, then it can and should be considered and so on for a range of questions that have appeared on both Acts. So, it will really depend on what happens in terms of your Honour's assessment of the evidence throughout the course of this inquest.

Your Honour, the second issue I wanted to deal with is just to expand on some submissions I made on Friday in relation to the submission made by Mr Edwardson KC that examination of the facts underlying the offence to which Constable Rolfe was acquitted would, in his words, "Undermine the jury verdict of an acquittal because the trial ventilated and established the cause, time, place and circumstances of death."

In my respectful submission, your Honour, that assertion on behalf of Constable Rolfe can be quickly dealt with. A verdict of acquittal does not resolve or establish matters between the Crown and the accused. A verdict of not guilty is delivered without reason and does not more than establish that the jury was not unanimous in finding Constable Rolfe guilty of the elements of the offence.

That's the first thing. The second is that this court will receive additional evidence not available at trial, which is relevant to the circumstances of Kumanjayi's

death. That is not being received to undermine the verdict and I hope to provide some assurance to Constable Rolfe's team in that regard. Indeed, it's not capable, that evidence, of doing anything to the verdict, which I made clear in my opening.

That evidence is received so as to enable your Honour to fulfil your functions under the *Coroners Act*. Third, I rely on the brief note that was distributed last week and oral submissions on Friday and confirm, your Honour, that there is ample authority for the legal position that Coronial inquests can and often do follow a jury trial and the Coroner is required to review the circumstances of death.

Particularly so that those listening to this legal argument can follow it and I provide two examples; one was the example I referred to last week, the inquest into the death of Vlado Micetic, which Coroner Jamieson provided over in Victoria.

Her Honour found in that case that there was substantial, potentially relevant evidence before. Sorry, I'll start that again. There were substantially potentially relevant evidence before her which was not before the jury. That evidence included the constable's personal and medical history, his own version of events as contained in comments made by him on social media and on other forums since Vlado's death.

And her Honour noted, "I am also able to consider a wider range of materials in the brief, because I am not bound, as the Supreme Court was, by the rules of evidence." And of course, that is exactly the same situation for your Honour under the *Coroners Act* of the Northern Territory.

And secondly, I refer to a case of Atkins [2106] NSWSC 1412 which has been referred to by a number of the parties. That case was an appeal from a Coroner's decision to hold an inquest into the death of Matthew Leveson who disappeared in 2007 at the age of 20.

At the time of his disappearance, Mr Levison was living in a de facto relationship with an older man by the name of Michael Alkins. A coronal inquest concerning Mr Levison's death or suspected death commenced in 2008 but was suspended because Mr Atkins was charged with Mr Levison's murder and alternatively manslaughter. Mr Atkins was ultimately found not guilty.

In 2016, the inquest resumed. Mr Atkins was compelled by the Coroner to give evidence and was provided with a certificate under the Act. In the appeal to the Supreme Court, Mr Atkins accepted that there could be following a person's acquittal of murder, but contended that the inquest could not, in that circumstance, be directed to the issue of whether an acquitted person caused the death, with which the inquest was concerned. In the view of McCallum J, now the Chief Judge of the Supreme Court in the ACT, the Coroner – the Supreme Court Judge held that the Coroner currently holding the inquest, plainly, had the authority to do so, and to review those issues.

With respect, the argument advanced on behalf of Constable Rolfe, was not supported by any authority. With respect, it is illogical. It would mean that when

someone was charged with a criminal offence, there could not be a Coronial, or after. There couldn't be one beforehand, because it would risk compromising a fair trial. And there couldn't be one afterwards, because of the risk of undermining the verdict, if your Honour was to accept the reasoning advanced.

Your Honour, other parties have provided submissions supporting counsel assisting's submissions, and citing relevant additional authority. So the third issue then, your Honour, relates to the admissibility. And I anticipate that although your Honour does not need to hear further – a matter for your Honour of course, but although probably doesn't need to hear any further oral submissions on the issues list, given I've hopefully clarified that, and we've returned to, to the extent necessary, seven broad issues.

And your Honour may hear further evidence – further submissions about admissibility. On behalf of Constable Rolfe, his legal team's objects to firstly, evidence from his phone records, which contain text messages. And secondly, the evidence of Ms Campagnaro, a former partner of Constable Rolfe. That evidence is found in the brief of evidence. Firstly, in relation to text messages. In the extract, at 3-161 and in the statement of Officer Pham related to that at 3160. And the statements of Ms Campagnaro are at 3152 and 718, and 88 and 8A1. Sorry, 8-8A.

MFI C, dealing firstly with the phone records. MFI C is a document handed up by way of a charge, which details some of the text messages that will be relevant. The extract from Constable Rolfe's phone is some 8000 pages. I don't propose, when we get to the relevant period in the evidence, to tender the entirety of that 8000 document extract. For a number of reasons, there will be text messages on there that are not relevant.

And also, there's obviously messaging there that is private, and should not be revealed in circumstances where it's not relevant. Discussions, for example with family. Arrangements for lunch, etcetera. Your Honour can image what would be on any download. And so what I would propose to do is to tender individual text exchanges, as relevant. Or to place them in one document and tender it, as we have done now, if there can be a broad agreement about what is relevant.

But your Honour can decide that at the time the tender is sought, when you're in a good position to access the relevance. They are just an example, in MFI C of what I imagine to be relevant. Your Honour, to the extent necessary, might I ask that your Honour's non-publication order over that document be varied, just to enable me to describe the nature of the text, so as to make this submission. I don't propose to read the text onto the record, because that, in my respectful submission, would not be appropriate, and wouldn't provide Constable Rolfe with the relevant protection.

THE CORONER: So the non-publication order relates to the document, but I'll permit you to refer to matters that you need to refer to for the purposes of these submissions.

DR DWYER: Thank you, your Honour. And I just reassure my friends, I'm not going to read any of the text messages onto the record at this point. Your Honour, the first thing is that at trial, in the Supreme Court, where Constable Rolfe faces charges of murder and manslaughter, an application was made by the Crown prosecutor to have two text messages admitted into evidence. And in that jurisdiction where the rules of evidence applied, they were not admitted.

The Supreme Court Justice, Burn J, ruled that the text messages had been legally obtained, in his view. But in any event, he found that the text messages would not be tendered, because of the specific provisions of the *Evidence Act*. In this jurisdiction, that ruling clearly does not bind your Honour. This is a jurisdiction, whereas all parties know, the rules of evidence, do not apply.

Your Honour, the rules of evidence may be relevant to your Honour's considerations under the *Coroners Act.* And, in my respectful submission you would receive those evidence – those text messages, and hear evidence related to those text messages. And then determine if it is relevant to your considerations under the Act. So the task that you are required to perform, is determined by your statutory functions. It is an entirely different task to the one that the learned trial judge had to perform when he was determining admissibility for a trial.

So I reject the suggestion that there should be any consideration of the Evidence Act, or indeed – and indeed, it's confusing to talk in terms of admissibility of various – of pieces on evidence, in the abstract, as if we were talking about admissibility under the *Evidence Act*. Because your Honour receives the evidence, and then your Honour determines, ultimately, whether it is relevant to your findings and recommendations, under the Act.

In any event, just to be clear, the text messages on MFI C include many more than just the two text messages that the Crown prosecutor sought to rely on. The text messages reveal very disturbing attitudes, I anticipate submitting, in relation to the use of force, or proposed use of force, by a number of Northern Territory Police who were communicating with Constable Rolfe. I expect to submit that there are about eight – I withdraw that. There are about five officers involved in that exchange.

The text messages, I anticipate your Honour will determine, include use of force, or propose use of force, relating to members of the Aboriginal community. And includes use of force on suspects. Those text messages from police, or relating to police who have sent or received disturbing text messages, include former members of the IRT, who served alongside Constable Rolfe. It is of concern, or I anticipate it will be to your Honour, that those text exchanges include some of Constable Rolfe's superiors, who were in a position, where they should have demonstrated leadership, supervision, and advice.

I expect to submit, your Honour, that they reveal disturbing attitudes towards Aboriginal people. They reveal attitudes of contempt towards the Northern Territory Community Police, or bush police. And they reveal a disregard for the way that

community or bush police, approach policing. They reveal attitudes of contempt towards senior police management. Your Honour will see in the submissions that have been handed up by parties, including for example, NAAJA and the families, that there is a contention that the messages reveal racist attitudes.

No doubt your Honour will have to consider that in due course. I commend to your Honour the thoughtful submissions of the Northern Territory Police Association, which urge caution, when you do hear evidence about text messages. That your Honour consider whether they are relevant to your Honour's statutory functions. And that your Honour would take care to ensure that it's not suggested that they are represented of more widespread attitudes, in the absence of any evidence of that.

Your Honour has a broad discretion to receive such messages, and then to consider whether they are relevant to the matters you can consider as part of your statutory exercise. Your statutory test again, is very different to what the trial judge was required to consider under the *Evidence Act*. At present, I anticipate your Honour, that there is no evidence, currently, that those attitudes are more widespread, as reflected in the text messages. But they do reflect a snapshot of what is available from a download of the phone of Constable Rolfe.

And it is important in my respectful submission, for counsel assisting to be able to explore the text messages with a number of witnesses, to determine whether those attitudes - or to determine issues relating to those attitudes if they are relevant to your functions under s 26 or 34 or indeed, your recommendations function.

It is important for parties to be able to ask those officers involved what is meant by some of those messages. Whether those comments do reflect a genuine attitude those officers held towards the use of force or decision-making by community police, whether they are attitudes held by other members of the police force who they work with who might be likely to exercise force or whether or not they were not intended to genuinely express negative attitudes or racist attitudes.

It is relevant to your Honour's powers of recommendations because understanding how - of those attitudes are found to be problematic and if they are, for example, found to possibly impact on behaviour, then it is really important to understand how those attitudes develop. That's not the evidence would not be being called to demonise those officers, it is being called to get to a level of understanding because if your Honour does find that they are relevant we need to understand why those attitudes develop and what the implications of them are and how that can be addressed.

Just to deal with some of the issues raised on behalf of Constable Rolfe. One is lawfulness. I have dealt with relevance. For the purposes of the argument, Constable Rolfe appears not to dispute that his mobile phone was lawfully searched under s 144 of the *Police Administration Act*, as Burns J held in the pre-trial proceedings. Rather, he says first that the dissemination of the phone evidence to the Coroner was unlawful and second, that use of the evidence by the Coroner is unlawful.

In my respectful submission Constable Rolfe's first argument fails because the interrogation of the phone was lawful. In the light of Burns J ruling, in order for Constable Rolfe to succeed in his argument that the interrogation of the phone was unlawful under s 144 of the *Police Administration Act*, he would need to establish that the power was being exercised for an improper purpose and he cannot.

First, the Police Administration Act does not contain an express limitation on the purposes for which the items seized under s 144 may be used.

Second, whilst s 155 of the *Police Administration Act* contains an offence relating to the disclosure of information obtained in the course of performing functions connected with the Administration of the Act, this effect is not committed if the information is disclosed, amongst other things, for the administration of the Act or is justified or excused by or under a law.

Third, the Police Administration Act confers broad functions on the Northern Territory Police Force which go beyond the detection and prevention of offences including to uphold the law and maintain social order.

And fourth, it was consistent with the functions of the police force and the members of the police force to disclose the text messages to the Coroner because the legitimate purposes of an inquest into a death in or resulting from custody include that your Honour may make comments or recommendations and report on matters of public heath and safety and the administration of justice connected with the death and that corresponds with the functions of the police force and its members of upholding the law, maintaining social order and preventing breaches of the peace. So accordingly, the *Police Administration Act* did not prevent the disclosure of text messages to your Honour and their use in this inquest is not for an improper purpose.

Your Honour, in any event, the *Coroners Act* does not prohibit the use of unlawfully obtained information. The question of whether or not a decision-maker may have regard to material, including unlawfully obtained material, depends on the powers of that decision-maker. In this case the decision-maker is your Honour, whose powers are governed by the *Coroners Act*.

A number of decisions bear this out and it's convenient to refer your Honour to two. The first is the case of *Martin v Medical Complaints Tribunal* [2006] 15 Tas R 413.

Your Honour, that was a decision of the Supreme Court of Tasmania reviewing a decision of the Medical Complaints Tribunal. The tribunal conducted an inquiry into a complaint against a medical practitioner where the complaint alleged that he had had a sexual relationship with a female patient. The prosecutor sought to tender a DNA profile that had been obtained by police under the *Forensic Procedures Act*. For reasons unnecessary to explore here, the police officer had breached a provision in *Forensic Procedures Act* that prohibited the disclosure of information contained on

the relevant police DNA database. The Supreme Court held that because the tribunal is not bound by the *Rules of Evidence* it meant that it could have regard to evidence that was logically probative regardless of whether it was legally admissible under the *Rules of Evidence*.

Further, because the *Rules of Evidence* did not apply, there was no discretion to exclude unlawfully obtained evidence. Of course, as I have said previously, Rules of Evidence do not apply in this court and the *Coroners Act* specifically provides that your Honour may inform yourself as your Honour sees fit.

Another decision worth noting is *Martin Kennedy v the Anti-Doping Rule Violation Panel and Chief Executive Officer, Australian Sports Anti-Doping Authority* [2014] AATA 967. That case also involved the use of a mobile phone download that was said to have been used for an improper purpose. At the risk of oversimplifying that decision I note as follows; the fact whether two Customs officers were said to have unlawfully searched a rugby player's phone. The information on the phone was then copied and disclosed to the Australian Crime Commission and that information was then provided to the Australian Sports and Anti Doping Agency.

An anti doping panel of a sports tribunal then took action against the rugby player. The rugby player submitted that the Administrative Appeals Tribunal should not or could not have regard to the phone download material because of the way it was originally obtained by Customs. Ultimately the AAT held that Customs had not unlawfully searched the phone so the issue effectively need not be decided. However, the tribunal said;

> Even if I were to assume in favour of the applicant that the initial disclosures by Customs to the AAC was not authorised by s 16 of the *Customs Administration Act* the Australian Crime Commission was perfectly entitled to require Customs to produce the material to it under s 20 of the Australian *Crime Commission Act* and it was entitled to disseminate it to the Australian Sports and Anti Doping Agency under a section of its act.

So, your Honour, the proper focus in the present case is on the *Coroners Act* of the Northern Territory and the Coroner's powers to have regard to information rather than on the *Police Administration Act* and the Police Powers to disseminate information.

In an abundance of caution might I say again there is nothing - absolutely nothing in the *Coroners Act* which expressly provides that your Honour may not have regard to unlawfully obtained information or which provides for a discretion for your Honour to have regard to unlawfully obtained information.

Second, and on the other hand, s 36 of the *Coroners Act* specifically provides that a Coroner holding an inquest is not bound by the *Rules of Evidence* and may be informed and conduct the inquest in a manner the Coroner reasonably thinks fit.

I not the analogy with *Martin v The Medical Complaints Tribunal* in which the Medical Complaints Tribunal was also permitted to inform itself as it saw fit and was not precluded from receiving unlawfully obtained information.

Third, in light of the statutory obligation on your Honour to find all relevant circumstances relating to a death and in that way to help to prevent avoidable death, there are additional reasons to think that a Coroner would be permitted to receive material regardless of how it is obtained.

There is a powerful statement to that effect in the decision of the Court of Appeal in Victoria in *Priest v West* (2012) 40 VR 421 at 4 where the court said;

> It is precisely because the Coroner must do everything possible to determine the cause and circumstances of the death that Parliament has removed all inhibitions on the collection and consideration of material which may assist in that task. Parliament has, in particular, exempted the Coroner's processes from the rules which limit the admissibility of evidence in court proceedings.
>
> Far from justifying a narrow view of the scope of an investigation, these provisions oblige the Coroner to take an expansive, or inclusive approach in our view. So said the Court of Appeal, Victoria.

And your Honour, even if there were a discretion to exclude the evidence, the balance would not favour doing so in light of the potential significance of those text messages. Your Honour, I come then to Ms Campagnaro, her name has been on the witness list since 26 May, when that witness list was distributed. So it should not take Constable Rolfe's legal team by surprise that a number of parties were interested in hearing from her.

The issues in relation to the admissibility of Ms Campagnaro's evidence are conveniently outlined in the submissions by NAAJA, at pars 47 to 53, the original submissions, and I respectfully endorse those submissions.

Your Honour, Ms Campagnaro gives evidence, in effect, of Constable Rolfe's approach to the use of force, including that when faced with a choice, he would usually prefer the option involving more, rather than less force. And she gives examples of that. And I won't say anything more about her evidence in open court except to say that she also gives evidence as to his attitude to oversight of use of force. And she gives evidence with respect to his attitude to his body-worn video camera. There is evidence in the text messages, I anticipate, your Honour, that is also relevant to the issue of body-worn video footage, and the attitude of Constable Rolfe, and a number of other officers – I withdraw that, and another officer at least, who he worked with.

And that issue, because it relates to – relates back to use of force, and the reason the body-worn video footage was designed to be captured, may well be of concern.

And thirdly, in terms of a category of evidence, Ms Campagnaro gives evidence as to Constable Rolfe's attitudes towards Aboriginal people, and his willingness to use violent force against Aboriginal people. Your Honour, just finally before I take my seat, I note that an issue was raised on Friday, about legal professional privilege which had been maintained by the Northern Territory Police Force, in relation to the report of Superintendent Proctor, which is in the first section of the brief of evidence.

As I understand my learned friend, Mr Freckelton KC, privilege has now been waived over that document. And so an un-redacted copy of that document will go in the brief of evidence. That privilege was clear – just to make clear again for those who are trying to follow this argument. Legal professional privilege was maintained, by the Northern Territory Police, and now waived by the Northern Territory Police. It's not privilege that is ever held by the Coroner, or for the Coroner to determine.

It was said by Mr Edwardson, that it was possible, that if an un-redacted version was not provided to parties, then there may be some application for recusal of your Honour. That argument, frankly, was – which was aired for the first time on Friday, your Honour doesn't need to hear anything more about it, because it's not being made. But I just make the point, there's other parties having their submissions, that Coroner's have access to information, regularly, which is provided by members of the public, for example, by others, or where privilege is maintained, that doesn't make its way onto the brief.

I'm not suggesting that's the case in this hearing, but there has been no application for your Honour to recuse yourself. Your Honour doesn't have to determine it. But I must say, I'm grateful to my learned friend, Mr Freckelton, for indicating that privilege has been raised, so that issue can be disposed of very quickly.

THE CORONER: Thank you, Dr Dwyer.

I note that I have received written submissions from each of the parties, addressing the matters that have been raised in the submissions of Dr Dwyer and the submissions on behalf of Constable Rolfe. They have all been marked as MFIs, but I anticipate that they will ultimately perhaps be exhibits in these proceedings. And I can assure everyone of counsel, who have provided those detailed submissions, that I have read those submissions.

But to the extent that parties wish to make further oral submissions, I now invite those. And I hope that between the parties, they've determined an order in which that might occur.

MR BOULTEN SC: I think we have, and I think Mr Freckelton's going to go first.

THE CORONER: Yes, thank you, Mr Frecklelton.

MR FRECKELTON AO KC: Thank you, and that's on this occasion, not necessarily on others.

THE CORONER: Sure.

MR FRECKELTON: And it's because of a position taken, on behalf of the Northern Territory Police Force and its members. Your Honour, we've heard what our learned friend has said this day, about the issues and questions dilemma. It is apparent that there were, whilst expression of disquiet from a number of quarters, my client included, that the revised list of questions. What we hear in effect from my learned friend is that the list of questions has now been abandoned.

And what is left is simply a list of issues. If – I'm hearing words of the friends at the Bar Table. We would like to know what the situation is, and I suspect all parties would like to know what the status is of the list of questions. And if my learned friend would like to confirm the status of the previous list of questions, or the later list of questions, I think that may be helpful to – to all of us.

THE CORONER: Sure, I'll just get that clarified before I hear further from you.

DR DWYER: It has no legal status, that document. The issues list, or with – which has the seven issues on it, with questions, that was distributed in May, has no legal status. And your Honour does not have to rule on it. The revised questions, which we hoped would clarify and assist my learned friends, which clearly haven't, has no legal status. And I don't seek to rely on it. Broadly, for the benefit, in particular, of Kumanjayi's family, and community, who are trying to understand these proceedings.

The seven broad issues that we all agree on, and we will use them to explain to the family and community, what we anticipate the evidence to be likely to be, before your Honour. And the sorts of questions that might arise. And no doubt, each party, when they talk to their family, or the community, or to their relevant clients, can say these are the seven broad issues, that we all agree, are likely to arise. And they can decide for themselves the questions that will arise under those issues.

I hope that somewhere along the line, by drawing out those questions, which clearly arise, in my respectful submission, from the Proctor Report, for the most part, they may be of some assistance to my learned friends as we go along, but they're not, please feel free to ignore them. It's just a document that was prepared by counsel assisting.

THE CORONER: Does that assist?

MR FRECKELTON: To some degree, your Honour, thank you, yes. That leaves us with a set of seven issues. My learned friend says that issues lists are simply those of counsel assisting. That is so in some jurisdictions at some times, and it's different in other jurisdictions at other times. There are occasions where Coroner's themselves embrace and identify a list of issues.

And so those form the formal parameters of the inquest. And that approach assists in providing clarity of expectation, and of delineation for parties. What we're

hearing is that not taking place here. Rather there is a list of issues, which are those only of counsel assisting. We – we only say this, your Honour. The seven issues are as follows. What are the circumstances of Kumanjayi Walker's death. Deployment of the immediate response team. Recruitment, training and supervision within the Northern Territory Police Force.

Conduct of the investigation. Department of Yuendumu Medical Centre staff. Policing broader issues. Diverting young offenders from interaction with police/criminal justice system. Those are diffuse. They're very broad. And we saw some benefit in the approach that our learned friends took initially, to render those more specific, by providing a list of subsidiary questions to each. And as your Honour knows, from our initial submissions, we have sought to avoid taking technical points or to be legalistic or in any way constructing impediments to the proposed scope of investigation.

However, what occurred was that some issues had been raised and our learned friends sought to reformulate the list of questions. Where we saw those, we were troubled by a number of them and we made submissions to your Honour accordingly.

And so, we find ourselves with the seven very cryptic and diffuse, we don't mean criticism by this, issues which on their own give relatively little guidance with respect to anyone about what is going to be traversed in the course of this inquest. That does construct or leave problems, we suspect, for every one of our clients and not just the Northern Territory Police Force, but the family members, everyone, as to exactly where we shall be headed in the course of this inquest.

A temptation to read back in some version of the questions were initially constructed or the revised version which was then propagated. We will live with it, your Honour. We're not going to construct difficulties where perhaps they won't exist. We will deal with the issues as they arise; if they're problematic for individual members of the force or for the institution of the force.

But we do say that we're a little troubled by being left only with issues which not only are not yours and not only are just very, very broad expressions of subject matter that might be traversed, but which do not provide much by way of assistance to anyone in terms of the parameters of the inquest. We'll see how it goes and if issues arise, we'll raise them with you as necessary.

DR DWYER: Your Honour, can I just help to see if I can alleviate concerns like this?

In the Proctor Report, which we now have an unredacted copy of in the brief of evidence, there is an index which goes through preliminary information concerning Kumanjayi's death, the background and context of Kumanjayi Walker, use of force history, circumstances surrounding the death of Kumanjayi, care and treatment of Kumanjayi post-shooting, adherence to previous Coronial or Royal Commission recommendations, recruitments' procedures, use of force guidelines and policies,

et cetera.

So, the parties have been on notice. That's, in my respectful submission, an extremely helpful report. It is now in evidence.

THE CORONER: 170 pages - - -

DR DWYER: Yes.

THE CORONER: - - - of analysis.

DR DWYER: Yes.

THE CORONER: Which should assist parties to understand the kinds of issues under those broad headings that we will be considering - - -

DR DWYER: Yes.

THE CORONER: - - - based on the material that was available to the officer who prepared that report at that time.

DR DWYER: Yes.

THE CORONER: And of course, things may change or develop, depending on evidence which is adduced in this forum and which everyone will have access to.

DR DWYER: Quite so, your Honour. So, I'm grateful for my learned friend indicating that there won't be technical objections. I understand that's the position that has been taken so far and am grateful for the assistance of the Northern Territory Police Force to date, absolutely.

I think, I hope, it will be abundantly clear, we really need to get on with the evidence in this matter. And my purpose today is to really try and reassure everybody that we need to do that to the extent I've try to assist with the issues list. That hasn't worked.

And so, let's just get on with it and go back to basics and proceed with our cooperative approach so that we can actually provide your Honour with a basis to investigate Kumanjayi's death.

THE CORONER: Yes.

Dr Freckelton.

DR FRECKELTON: As to the matter of client/legal privilege, we have given very careful consideration to what's been said by our learned friend. We have reviewed every entry that was potentially in dispute within the context of the vast amount of material now before your Honour.

We have consulted with the Director of Public Prosecution and reflected upon the need for the inquest to stay away, so far as possible, from technical objections and other minutiae legal disputation and complex issues in respect of what constitutes waiver in a particular circumstance.

And consistent with the approach that we have set out in par 3 of our initial submission, in those circumstances, we do not press the objections which previously we had ventilated. Now - - -

THE CORONER: So, Dr Freckelton.

MR FRECKELTON: Yes, your Honour.

THE CORONER: I'm just confirming that an unredacted version - - -

MR FRECKELTON: Yes.

THE CORONER: - - - of what's being referred to in shorthand as the Proctor Report - - -

MR FRECKELTON: Proctor Report, yes.

THE CORONER: - - - can now be added to the brief of evidence.

MR FRECKELTON: Yes.

THE CORONER: Thank you.

MR FRECKELTON: Thank you, your Honour. So, that's the final Proctor Report and that's has final considerations for other (inaudible).

Now, as to the admissibility issue with its two limbs. We have a nuance position in respect of that which we endeavour to set out in our submissions initially to your Honour.

And those come at par 22 and following. Our position is that the seizure of Constable Rolfe's phone, pursuant to s 144(2) was appropriate and lawful and that seems to be reasonably uncontentious. And that states, of course, that a member may seize anything relating to an offence as a result of a search under subs (1).

So, the phone was taken and there are no specific provisions in relation to what can and cannot be done with matters seized in that context in the Northern Territory. And we say that it is ordinary practice and proper for tests to be done on matters which are seized; bloodstained shirts and similar, discs that might be found and similarly, with a telephone which is taken in these circumstances.

So, our first position is that the seizure was appropriate. The downloading of

material on the phone was appropriate. There was no improper purpose involved in the exercise at all. And that left the Northern Territory criminal investigators with material. And the question was, what was it legitimate to do with that material, both in the context of the criminal investigation and the associated Coronial investigation.

We want to say now and we will repeat as and when necessary, that the proposition that the police conduct completely separate and disparate investigations when looking at whether a crime has been committed and when endeavouring to assist your Honour is fallacious.

The two are inevitably interconnected and when there are those two investigations running simultaneously, which happens from time to time, they generally don't collaboratively, and that's unsurprising, because it's police doing both of them.

Your Honour has the opportunity to give directions to those assisting your investigation and usually there's intersection between the two and collaboration toward mutually satisfactory objectives. The proposition that something untoward or improper was done by the material from criminal investigators being made available to Coronial investigators is unduly artificial and unhelpful.

We have noted the helpful submissions generated by our learned friends for Constable Rolfe in respect of issues that exist in respect of collateral usage of material that is seized pursuant to (inaudible). We say nothing about that, but what we do say is that those authorities do not apply in this kind of context.

So, that leaves considerable scope for your Honour to determine what you want to assist you in your investigation. That material has been made available to your Honour. We have already contended to your Honour that the seizure we're downloading and now the provision to your Honour is lawful and legitimate and orthodox.

If those points are correct, then your Honour has information that you can utilise as you deem appropriate. I'll pass to that in a moment. There are some parameters in respect of that. However, ultimately, your Honour has some reservations about the first three aspects of legitimacy, then we move to what counsel assisting your Honour have put to you. And in that regard, we agree.

In other words, your Honour has significant latitude in respect that is that you are entitled to put information which been obtained in any unlawful or improper way. To be clear, we say that does not arise. But were you to find that in find some technical wires, that transfer from criminal investigators to Coronial investigators, has some deficit about it, the next question is, what you can do in respect of that information.

That's a discretionary issue. It's a discretionary issue under traditional common law, where admissibility issues apply. It's a – it's a discretionary issue, under s 138 Evidence Legislation. Does that apply here? So you're obliged, but you should, with respect, be guided by the underlying principles which have generated the law at

common law, and under legislative provisions in respect of the use of improperly obtained information. Which is to look at the utility of it for what you are doing. To review the degree of impropriatory, and to balance the one against the other, giving particular consideration to whether any – any unfairness is perpetrated by use of information improperly obtained for the process that the court is undertaking.

So that leaves and obligation upon those who contend that there is some reason not to use improperly obtained evidence, to establish unfairness that is bought upon them, or some problematic outcome that will result more broadly, from the use of improperly obtained evidence.

Now even were your Honour to find that the transfer of information from criminal investigators to Coronial investigators, had some deficit about it, we submit that in all the circumstances, there is not a problematic exchange of this information, and that it is proper for you to have regard to the ultimate objective, as set out by our learned friend, that this investigation utilise all information which is going to assist it, namely you, in arriving at findings, or recommendations/comments in the interests of public health and safety or the administration of justice.

Now your Honour, that is not at large. And our learned friends for Constable Rolfe have identified to you, that there needs to be a nexus between the information that we are talking about in this regard, and something to do with that (inaudible). And we respectfully submit that they're absolutely right there. And our friend for the Northern Territory Police Association, has made submissions which highlight the need for you to assure yourself, that that nexus is there.

The risk if you do not, is that you will look at information which has only tangential relevance to the death. And commence to investigate matters in respect to it, or commentate upon it, or recoil in respect of it. That, with respect, is not what ought to happen in this court. The Hansworth decision, the Dugan decision, and many other ones to which your Honour has been taken, all highlight the fact that there – that there must be a nexus between the death, and the circumstances of death, before a Coroner embarks upon analysis, critiques, commentaries, reports, or recommendations.

That's an issue for your Honour. Your Honour, with respect, should be asking herself ultimately, when you consider, at the end of this enquiry, that the evidence that you receive, whether the information that you have received from the text messages, goes to something related to the death, in respect of which you should make findings or reports, or comments.

At this stage we're making no submission in respect to that. That's something for your Honour to reflect upon, with respect, further down the track. We do sound a note of caution though, that in respect of this, and other matters in this inquest, matters such as the intervention, matters such as education of young Indigenous persons, matters related to the health of the Indigenous community, and multiple others. There is potential relevance to the death. But there's the risk that it

becomes strained, or tangential, interesting and valuable though such enquiries be, and useful as such as recommendations might end up being.

But there are constrains upon this court that have been articulated by appellant decisions around the country. And those do impose some limitations, always by reference to nexus to the key event, the death. And your Honour is well aware of that. So our position in respect of the – the admissibility issue in relation to the telephone is nuanced in that way. In respect of the Campagnaro material, we repeat and rely upon the very short matters that we raised in par 35 and following.

Again, it's a matter of whether ultimately your Honour concludes that that material is going to assist you in relation to matters which are related to the death. For instance, your Honour, were you to find that there was a racist police officer. She had obnoxious views, that would offend all right minded persons in this court, and in the general community. But she had no real connection with the death, or that she happened, for instance, to be a member of the police force.

It would not be appropriate, with respect, for you to embark upon (inaudible) about it, or to critique her, or to spend inordinate amounts of time trying to ascertain whether her attitudes, unpleasant though they be, are replicated elsewhere with the police community. If, however there's reason for you to think that that person's attitudes had some impact upon those who instrumentally caused, or facilitated a death, that would be a different matter.

So ultimately, the issue in respect of Ms Campagnaro, is going to be whether you find her to be a person of – of credit. Whether you can rely upon her memories of – as to conversations she had with Mr Rolfe, or things that she imputes to him, have some validity. And then ask yourself the next question, which is whether that had a relevance to what occurred in his interactions with Kumanjayi on the day, or the decisions that he made preliminary to, for instance, entering House 551.

So again, we say to your Honour, that there is potential relevance in respect of the Campagnaro evidence, but it is evidence that needs to be viewed carefully, given the relationship formerly existing between Ms Campagnaro, and Constable Rolfe, are all kinds of factors which could result in an erosion of utility in that evidence. And merely because assertions are made by her, it doesn't follow that any attitudes she imputes, ex post facto to Constable Rolfe, had any bearing or impact upon what he did or didn't do on the day.

Ultimately it's going to be a discretionary issue for you. We've voiced, therefore, some concerns in relation to the scope issues. It's perhaps helpful for us to explain, very briefly, why we have taken that step in revised to the revised questions, accepting that those revised questions now don't have any status. This is important because we are about to embark upon substantive evidence of a very substantial inquest with a very large harness of witnesses.

THE CORONER: Is it something that we do need to hear about now or is - - -

MR FRECKELTON: Yes.

THE CORONER: - - - something that we can deal with as the evidence unfolds?

MR FRECKELTON: I would like to pre-figure it but really briefly.

THE CORONER: Sure.

MR FRECKELTON: I'm not going to take up your Honour's time, but our concern is that there are some issues which arise in respect of Constable Rolfe. But it is important that those not be extrapolated necessarily, unless there is proper reason to do so, to the other members of the IRT to the man who was sitting with Lucky the dog in his hands to others who made decisions anterior to any of the emergence of those members from the Yuendumu Police Station.

And we identify the need for caution in terms of any free-ranging investigation of attitudes, mental health conditions, substance use or other collateral matters, unless that nexus is there to the death which you are investigating. No more can be said.

Thank you, your Honour.

THE CORONER: Thank you, Dr Freckelton.

Mr Boulten?

MR BOULTEN: NAAJA is very appreciative of the work that has gone into the scope issues over the last – not just the last 72 hours, but leading up to the inquest. We are very well informed now. We certainly appreciate that detail with which counsel assisting, including junior counsel assisting's email of yesterday, shed light on what these issues are.

And we agree that it is much better for you to deal on a document by document basis, question by question basis as to relevance. So far, we've had two witnesses where there has been no objection, despite questions that easily fitted within the questions underlying the issues.

And that may well be the case as we go forward so far as our submissions about scope are concerned, they take a backseat now, but they're not completely irrelevant - - -

THE CORONER: Sure.

MR BOULTEN: - - - because they will be underlying what we will be submitting about any particular issues that arise that call for your Honour's ruling about admissibility of evidence, for instance. It goes without saying though that it would be impossible to divorce consideration of relevance from what actually happened on the night, the day of the incident, the days before the incident when there was the other attempted arrest.

How it was that the four police came to Yuendumu from Alice Springs, five police came from Yuendumu to Alice Springs (sic), what was the reasoning behind it, how it was that decisions were made in the aftermath of the shooting, how it was that people were refused access to information, including Mr Williams.

These are all central issues and we have made clear from the outset, not just in our written submissions, that it would assist everybody, your Honour, if you were to have regard to these issues through the prism of an understanding that decisions are not always made with conscious, deliberate racist intention, but that decisions can be made which incrementally, without conscious bias, can impact on Aboriginal people in a way that they do not impact on other people.

And that is central to why it is that NAAJA is urging your Honour to have regard to what academics describe and what courts have described as systemic bias or systemic racism, as opposed to just whether or not an individual police officer had a racist intent in any particular act that he or she undertook in the events that are obviously relevant to the inquest.

I'll come back to that in a minute in relation to text messages. But it is important to deal with what Dr Freckelton has just said concerning the police submissions about scope.

If your Honour is going to be asked to rule on individual pockets of evidence on the basis that involved police officers are the only people whose state of mind needs to be examined or could be examined, that would be an artificial narrowing of your Honour's proper purposes, statutory functions.

My friend has sought with his written submissions today to narrow the involved officers to the class of people who were actually the ones who went into the house or who stood at the threshold of the door to the house and that anybody further back in the process of decision-making was not involved.

That is completely artificial and it is not reflective of the evidence that you've already heard in this inquest last week. May I just say this, part of the confusion at the bar table about scope was due directly to the challenge that was made to underspecified pockets of evidence by Mr Rolfe.

We have complained about this in our two sets of written submissions. So, we are supportive of the narrowing of focus to particular pieces of evidence. A general challenge was underpinned by thinking, articulated in submissions, that because there was a jury trial, your Honour could not possibly delve into evidence that called into question or put to one side the force and effect of any acquittals.

We adopt completely what counsel assisting has said in writing and this morning in oral submissions, as we adopt what Dr Freckelton has said about this as well. I won't repeat it, but it is entirely artificial to focus on the elements of the criminal offence as being the foundation and study for a no-go area.

Let’s make it clear, the acts that were charged as the acts causing death at the trial were the two shots, second and third. The verdict only relates to those two shots. The verdict does not relate directly to the first shot, to the decision to enter the premises to arrest, to detain, to deploy the IRT and so on and so forth. There is ample law which my learned friend has taken you to and which we have included in our submissions, in any event that even the acts causing death can be properly the subject of investigation in a new place.

Mr Rolfe's true protection in this particular forum is s 34(3) and you will not make a finding that states that he is or may be guilty of the offence. You must not include in your finding a statement that he is or may be guilty of an offence. But that is all that circumscribes you. And is entirely artificial than to say - as we have heard here on Friday - you cannot look into whether or not Mr Rolfe was motivated by, for instance, a racist attitude when he came into the house. That is drawing a bow that is way too wide, we say, and don't be tempted to narrow your investigation in that way.

The jury's verdict was a verdict that was delivered after consideration in the context of the onus and standard of proof in a criminal trial. That has never stopped a civil court ventilating almost exactly the same issues on a different stand. Nor would it impact on your ability to do so either.

So, your Honour, turning to the exact rulings to be sought, my friend has not tendered the phone messages. She will be tendering some of them. Let's have a look at them when they're tendered, but can I tell your Honour that there is nothing in the group of messages in the document that was marked on Friday that we see would be outside the scope or the relevance of your Honour's inquest. Even where, for instance, it does not deal directly with what Mr Rolfe was thinking, it is still relevant to consider the attitudes of people who might properly be thought to have had an impact on some of the issues that led to the events surrounding death.

So, for instance, without reading out the message, there is as message exchange between Mr Rolfe and a more senior officer where the other senior officer is undoubtedly speaking in overtly racist terms. If that person was involved in Mr Rolfe's training, if that person was involved in the decision-making about when and how IRT operatives should be deployed, then that is a matter that we would argue is sufficiently connected with your functions and your statutory powers of investigation that would allow an examination of the attitude with both Mr Rolfe and his superior officer.

It's not hard to think of how it might be relevant. "Did you talk like this to all of the people that you worked with?" "Was this something that you discussed regularly?" "Was this an attitude that was held by all the other people in the unit or are you just a vagabond out on your own?" Let's see what the argument is when the text message is tendered. But we would argue that there is going to be relevance in all of these ones. We have others that are of a similar ilk that we will be attempting to tender as well. So far as legality is concerned we - as you can see

from our written submissions - present the same arguments as counsel assisting and Dr Freckelton, we contend that they are compelling.

So far as the issues concerning legal professional privilege is concerned, that is resolved yet it's clear to us now - perfectly clear to us - from the written submissions that Dr Freckelton filed this morning, that the vast majority of the redactions were totally connected to the police receiving advice from the DPP about whether to charge or not charge Mr Rolfe with murder or some other criminal offence. We drew that conclusion just by reading the document itself and drawing a logical conclusion about what was redacted.

THE CORONER: And about the nature of legal professional privilege.

MR BOULTEN: Yes, your Honour. We all knew that it was the police's privilege and what else would they be talking to the DPP about? We haven't seen the last category yet. I don't know what that is but at least so far as all of those ones revealed this morning in writing to the parties, it was obvious what it was about.

To then foreshadow on Mr Rolfe's part, a challenge to your Honour's ability to sit in these proceedings was entirely specious - unless my friends didn't figure it out for themselves, but I don't know why they couldn't have figured it out and to spell it out. We all know he got charged. We all know that the DPP recommended that he be charged. We didn't have to read it this morning. It just follows that they must have because he got charged. He was charged so soon after the events - and he's gone on trial and he's been acquitted - and your Honour knows all of that and your Honour knew that before you received whatever it was that was unredacted when you got the unredacted version. We don't know whether you read it or not. I don't know whether you did or not but even if you did - and assuming that you did - you could not possibly have formed the basis for a concern that you might be biased.

THE CORONER: If there was a genuine issue one would have thought that the application would have been made. But it wasn't made.

MR BOULTEN: It was foreshadowed and it was left lingering, as it were, as we said about another issue in terrorem, not that you are frightened of it, I know, but - that is all I really need to say about that.

So the one issue that does require a ruling right here and now is Ms Campagnaro's evidence, and I am going to sit down and Mr Murphy is going to deal with that, your Honour.

THE CORONER: Thank you.

Mr Murphy?

MR MURPHY: Your Honour, I note the time. Am I going to start it - - -

THE CORONER: Yes, we should. Thank you for noting the time. I have been listening too intently to glance to my right at the clock.

But we will take the lunch adjournment.

LUNCHEON ADJOURNMENT

RESUMED

THE CORONER: Dr Dwyer.

DR DWYER: Your Honour, just before Mr Murphy addresses your Honour, might I just make it clear that the proposal for the witnesses, for the rest of the week, following your Honour's ruling, which I understand your Honour will be in a position to – well you anticipate you'll be in a position to bring down your ruling on this issue tomorrow morning.

We then propose to hear evidence from Sergeant Annie Jolley, and then from Constable Lanyon Smith, and then I think it's Senior Constable Christopher Hand. And we anticipate that that will see the week out.

THE CORONER: Yes.

DR DWYER: And we would start next with Constable Felix Alefaio, and of course, we'll redistribute the issues list – sorry, I withdraw that. The witness list, certainly not the issues list, but the witness list. Just to clarify the order, given that there's been some disruption.

THE CORONER: Sure.

DR DWYER: And just to make it clear before anybody has an opportunity to address your Honour. I anticipate that with the witnesses this week, including Sergeant Jolley, the text messages that are referred to in MFI C, will become relevant. That is, I wish to ask questions of Sergeant Jolley that relate to some of the messages. And to that end, because I anticipate their tender, if there is any objection then, I – or presuming that there will be, given what's followed from Constable Rolfe's lawyers, I would ask that your Honour – that your Honour's ruling assist us, or guide us in that respect.

So if anybody else want – wants to say anything about their text messages and their admissibility, in my respectful submission, they should do so this afternoon so the Coroner is assisted.

THE CORONER: Thank you.

(Inaudible) any further with having to break for further submissions on that text messages, and whether I can receive them or not. So I think they fall – fall squarely under objection from Constable Rolfe, and that should be properly addressed now by all parties.

DR DWYER: May it please the court. And your Honour, I note that parties have done written submissions - - -

THE CORONER: Yes.

DR DWYER: - - - so I'm not suggesting that that's necessary, I just wanted to - - -

THE CORONER: Just wanted to – yes.

DR DWYER: - - - I - - -

THE CORONER: I intend to make a ruling on that before we commence with the next witnesses.

DR DWYER: May it please the court.

Yes.

MR MURPHY: Thank you, your Honour. And your Honour, and counsel assisting may be grateful to know, that at least for NAAJA's part, particularly having heard that, we don't seek to make any further oral submissions on the text messages. And I'll just address your Honour on the objection that has been taken to the evidence of Ms Campagnaro.

THE CORONER: Thank you.

MR MURPHY: As it was developed by his counsel orally, Constable Rolfe's objection to that evidence was taken on three basis. First, that it would – or that it's admission into evidence, or certain parts of it, would call into question the jury verdict. I won't repeat what's been said by more senior members of counsel at the Bar table. But in our respectful submission, that objection was not well taken.

The second basis of objection was that the admission into evidence of certain parts of Ms Campagnaro's evidence, would potentially prejudice criminal proceedings, or anticipated criminal proceedings. But again, that issue has fallen by the way side, after the indication from Dr Freckelton on Friday. So in our submission, the remaining basis – basis of objection of any moment is relevance. And that's what I'll direct our oral submissions to.

Your Honour, in so far as it's necessary to identify the statutory hook, or relevance as a criteria, or criterion of admissibility, is in s 39, in our submission, of the *Coroners Act*. As your Honour knows, while that provision provides that the rules of evidence do not apply, it states that your Honour may inform yourself, as your Honour thinks fit, but reasonably. And in our respectful submission, and in light of the authorities to which we've cited, reasonableness, in that sense, encompasses relevance.

But, we say, that reasonableness, in the manner in which your Honour informs herself, is also capable of encompassing, and should encompass your Honour having regard to the state or stage of the proceedings at which the assessment is being undertaken. And counsel assisting's already addressed on that in a different context. But we would endorse the idea that your Honour would take a cautious and

conservative, in one sense, approach, to ruling anything out at this stage, because of the very early stage of the proceedings.

And no doubt the way in which the evidence will develop. We would also say, with reference to authorities to which your Honour will be familiar with, the *Evidence Act* context, and the common law concept of relevance, that relevance is always assessed – the relevance of particular evidence, is assessed in light of other – other evidence, that your Honour anticipates receiving. And this is of some significance for a submission from Dr Freckelton, earlier today, when Dr Freckelton hypothesised the example of a particular member of the police force who might hold particularly objectionable views.

But I understood the point today that that one instance might not be of relevance to your Honour's overall assessment of the evidence, and the issues and the statutory functions which your Honour is undertaking. We endorse that. But we would submit that – NAAJA would submit that it's important for your Honour not to view the evidence of Ms Campagnaro in isolation. The extent that Ms Campagnaro's evidence talks about instances of excessive uses of force, or instances of attempts to avoid oversight of uses of force.

Whether that be by not activating body-worn video or by framing circumstances, I'll be delicate in the way that I make this submission because I don't want to go into the details of the evidence that's the subject of an objection, but in our respectful submission, Ms Campagnaro's evidence goes to and provides examples of a number of ways in which it's alleged that, and it is only an allegation at this stage, Constable Rolfe sought to avoid oversight of excessive uses of force or potentially excessive uses of force.

It is not just the nonactivation of body-worn video. Another example would be found in par 10 of Ms Campagnaro's most recent statutory declaration and I won't go to the contents of that now.

But to the extent that those examples mirror or are corroborated or are seen in the context of other evidence, including evidence in the text messages where there's exchanges between officers in relation to body-worn video and body-worn video or body-worn cameras being pointed in other directions whilst force is being used against civilians.

Your Honour might then see Ms Campagnaro's evidence, if it's accepted, to go, not to isolated events, but really a pattern or practice and indeed, potentially a culture, not in the police force, we say, but potentially in segments of the police force. And that, we say, is the correct framework of analysis for relevance.

Beyond those general comments, your Honour, we will just seek to make some submissions about – in response to Constable Rolfe's – the way in which relevance is framed as a test in Constable Rolfe's written submissions, which I understand not to have changed orally.

Your Honour, in Constable Rolfe's written submissions on evidentiary objections dated 2 September 2022 at par 48 is an example of this approach. Constable Rolfe, through his counsel, says that:

"Given that Ms Campagnaro or her evidence generally has no relevant connection with any of the events that immediately preceded or occurred on 9 November 2019, evidence is not logically probative of any issue arising in the inquest."

And the reason I seek to respond to that is because respectfully, it's suggested that that's not the correct framing of the relevance inquiry that your Honour will be making for the purpose of this ruling. Your Honour will make, it's respectfully submitted, a ruling and consider relevance in light of your statutory task.

And as your Honour knows, that statutory task either requires or permits your Honour to make findings and recommendations not about, to use Constable Rolfe's words through his counsel, events immediately preceding or occurring on 9 November, but "any relevant circumstances concerning the death", your Honour knows that's from s 34(1)(a)(iv) and it's quite clear that the use of "circumstances" in that context extends well beyond events preceding or occurring on 9 November.

And importantly, it is not limited to causal circumstances. Your Honour will also appreciate that the inquiry into relevance will be assessed in light of your Honour's statutory functions to potentially make recommendations about matters of public health or safety or the administration of justice connected with the death.

And I emphasise the word "concerning" that are in a previous statutory provision that I cited and the word "connected with the death", because really what the effect of those words for this current ruling, your Honour, is that relevance is really mediated or placed at two levels of extraction.

I'm sure I'm not going to express this particularly well, but for example, when your Honour has regards to your Honour's functions under s 26(1)(b), that is, to investigate and report on a matter connected with public health or safety or the administration of justice that is relevant to the death.

Your Honour can see there that the question of relevance is obviously not – or the questions of relevance of evidence is obviously not just simply, is the evidence relevant to the death. It is, "Is the evidence relevant to a particular thing, in this case, a matter connected with public health or safety, that is itself relevant to the death."

So, there's one further level of remove between the evidence and the death that respectfully has not been accounted for in Constable Rolfe's submissions. And once that's acknowledged, it readily becomes apparent that the objections are not sustainable.

And I'll just give one example of that again, without referring in any detail to the evidence, because it is objected to. But your Honour will recall Mr Edwardson of

King's Counsel acknowledging orally that no objection was taken to the broad statement of the issues in the issues list which has been the subject of so much discussion today.

Some of those issues, or one of those issues tighter policing broader issues, and another one the supervision of police in the Northern Territory Police Force and it seems then to be implicitly acknowledged that those are matters connected with public health or safety or the administration of justice that are relevant to the death.

And once that's acknowledged, in our submission, the aspects of Ms Campagnaro's evidence that we've gone into writing about and that counsel assisting has addressed upon can easily be seen to fall under those more general statements of the issues.

So, one example, which I have referred to earlier, is the way in which body-worn video was used or the way in which behaviour was engaged in after the use of force to apparently justify the use of force. Those sorts of things obviously relate to supervision of police and they relate to broader issues in the policing which Constable Rolfe, through his counsel, has acknowledged are relevant issues for this court's consideration.

So, once relevance is understood in the, respectfully, in the proper framework, all of Constable Rolfe's objections to the evidence fall away based on the relevance basis.

Your Honour, unless my lead tells me that there's anything else to say, those are our submissions.

THE CORONER: Thank you very much, Mr Murphy.

Further submissions, Mr McMahon?

MR MCMAHON AC SC: Thanks, your Honour. It probably won't be long before I'm always following the younger Julian. Your Honour, I just make a few brief remarks, if I may.

THE CORONER: Yes.

MR MCMAHON: Because although there's not much left to say, in our submission, there are still some things that ought to be said today. And one of them is on this question of scope in issues list and the so called 50 questions attached to the seven issues.

It should be said, because of some things which have been said, that those seven issues and the 50-odd questions have provided much assistance to the parties. They have been very helpful. They provided guidance between roughly May or whenever they came out, April, until now.

And they have set this inquest on a course which everyone here understands, although there are obviously disputes around the borders. And there have been some disputes in the last few days because of some things which have arisen, but overall, it should be said that they provided a very valuable function. And we, for our part, are very grateful that that work has been done by counsel assisting.

One of the recent variations that has caused some consternation in the last few days is the consideration of the question of racism. And NAAJA have addressed this, I think, in the submissions filed in the last day or two but for our part we would just highlight the fact that racism operates at a number of levels. It can be ugly and overt, such as, we would say, in the text of - some of the text of Constable Rolfe and other of his colleagues but it can also be structural, systemic, unconscious and nevertheless operate perniciously without the use of overt and ugly directly racist terms and we expect there will be evidence of all of those kinds of racism emerging one way or another in this inquest and the way that that will arise will, to some real extent, have been guided by the questions and the issues which just adds to their value even though they have no adopted a slightly different status.

On the question of the acquittal issue which has probably come and gone - well, maybe come and gone - we, like I think all the other parties - most of the other parties - adopt what counsel assisting said in their document. We do make a couple of comments because, in our submission, issues touching on that - questions touching on that will permeate the evidence of numerous witnesses and it will come up again and again. And we say that considering the functions of this court and when this court has to consider the circumstances of the death and has to make recommendations to prevent future deaths in similar circumstances, it's essential that this court have a deep and wide understanding of how the death came about and we put that in previous written submissions.

How do we have paramilitary police of this kind operating in this way and behaving as they did? And the relevant evidence for that goes far beyond what was at trial and far beyond legal issues relevant to the acquittal which Mr Boulton has already gone through and I won't repeat.

But evidence not at trial, which will be relevant to issues that your Honour must consider, may be relevant to issues that your Honour must consider, especially in combination such as the combination of whether Rolfe and others were dishonest and these in isolation may not amount to a great deal but in combination may be relevant and I hasten to add, we for our part of the Parumpurrua committee don't expect to ask questions about the matters I am addressing now but we are intensely interested in how the matters are dealt with in the court. We have said from the outset those matters which we intend to ask questions about are quite limited and I won't go through all of that now, but we are very interested and concerned about these matters.

Questions such as the combination of the demonstrated contempt for community police, a history of dishonesty, for instance in the various applications of, for instance, Constable Rolfe. But others too; applications to Victoria Police, West

Australian Police, Queensland Police, Northern Territory Police; questions of drug use; and possibly the question of drug use in combination with prescribed medication. In combination, all of those things may well be very relevant to this for understanding the whole picture. And again, in combination, all of those things may be very relevant to questions of Northern Territory Police Force recruitment and supervision.

And one only has to consider all of the issues I have just raised to realise how important both recruitment and supervision may turn out to be in understanding all of the circumstances which led to the death. All of those matters are relevant and important regardless of the acquittal.

On the question of the texts, we have nothing to add to what has been said on the question of legality. But on the question of relevance, we do need to be clear, the importance of some of those texts to this court's function is very clear. Those texts may - and probably do - display entrenched attitudes and they offer valuable insights to this court into behaviour of those intimately involved in the events, which in turn go to the circumstances concerning the death, and those matters relevant in s 26 of the Act. And insofar as what was said last Friday that, for instance, there is no evidence of racism on 9 November, rather than go through challenging that now, I just make the point that, just as in other areas of conduct which is examined in the courts to do with, for instance, terrorism cases, state of mind can become very important. It can be established by a series of relatively small steps or advance or words or conduct and state of mind, if raised and probably shown, is also very hard to - for a party in the court to say, "Well, that's no longer my starting line" and to say that once you start to say, "Well there's a whole pattern here which reveals a state of mind, was that your state of mind at the time of a relevant event.

Mr Rolfe's counsel has invited this analysis by reporting that there is no evidence of racism on the 9 November and in the terms of overly overt words, that may well be the case. I don't say it is, but it may well be the case. But in terms of the texts being relevant to assessing the circumstances of the whole of the situation, that's a very different picture.

Now, it seems to have been accepted by the parties before me that one doesn't go to these texts in terms of their content so I will just stick with that. I don't need to go to their content but in terms of language, sentiment and attitudes which are completely unacceptable for people wielding the sort of power, the capacity for force, the strength that the police wield in communities, especially when they turn up in remote communities. The sequence of texts running from - and I am using the Crown document MFI C, running through March, repeatedly through April, May, June, July, well into September, they are the ones at my hand now. The notion that that sequence of texts which is but a small example was on somehow too remote from that that your Honour has to consider, is something which we would strongly disagree with.

On the contrary we would say that even a sample of some 50-odd texts of the most disturbing content reveal states of mind which are very relevant to the matters

Your Honour has to consider, and they involve people who are wielding AR15s, Glocks and some of their superior officers, it would seem.

As I say, we don't propose as a party here, to be pursuing that in any real length, on the assumption, of course, that others do, but the notion that that material, even if it was admissible might be too - might not be relevant. We strongly reject that argument.

On the question of Ms Campagnaro we adopt what has been said before us by NAAJA and Mr Murphy, particularly on this question of use of force she may not be a particularly potent witness, for reasons that Mr Freckelton alluded to. But that doesn't mean that she should therefore be put aside. Her evidence may be of some assistance, and some relevance to support other evidence which may be contested. And this question of use of force, again, goes to matters of public safety, oversight and supervision, which are going to be matters which feature and are central to where this is inquest is (inaudible).

Ultimately, leading to recommendations, we hope, of prevention. It's been said in the last few days, last Friday, well you can't look at every instance of use of force that Mr Rolfe may have been engaged in. And you can't look at all of his cases, so it sort of goes nowhere. But there's more than one way to look at that. As I understand from reading through the materials, there are in-depth analysis within Northern Territory Police of the entries of use of force in their records.

And there was an examination conducted between I think November 2017 and 2019, showing some – in excess of 3000 entries of use of force, proper entries of use of force in the records. Out of which, about 152 I think, were ultimately determined to be at least matters to be considered as excessive use of force. And out of those 152, that two-year block, as I understood what I read correctly, only about 56 of those relate to the southern command and Alice Springs area.

Now we're not talking about the improper use of force. We're talking about complaints about the use of force. So that's about 28 a year in the two years that were analysed. And if I further understood other material, Mr Rolfe has been the subject of perhaps nine complaints about the use of force. I make no comment on whether they're fair complaints, or unfair complaints in his three years in the police force. And if I'm right about that, then he's averaging about two or three a year, and (inaudible) that might be averaging 28 a year.

So it becomes a significant statistic to consider, without in any way examining, and I don't say this shouldn't be done, but without in any way examining the details, and minutiae of any particular allegation. Because it ultimately goes back to – well, public safety. Which is related to supervision by the superiors of officers such as those in IRT. What are the trigger points where – and I know, from reading material, that the NT Police is certainly well and truly onto these issues. But this is – we make it very important for your Honour, never the less.

Finally, your Honour, probably not appropriate for me to remain silent in the base of the comment from Mr Freckelton, with which I don't disagree, about the danger of the strained relevance – the strained relevance of some areas of questioning which might emerge, such as to do with education or health or intervention, and so on. And he's perfectly right in saying that any issue, including those, has to be dealt with within the proper constraints.

But we do say, in order to understand how it came about that paramilitary police are wandering around in that community, in the way that they were, in the manner that they were, upon their arrival, almost one might think, as if in a war zone. Holding AR15's at the ready. And how Kumanjayi Walker was bailed up in the way that he was. Inside a family home. And not the first one that was entered. And how all of that conduct came about. And how then, that young man died, without his family, who were outside, and his body inside. And how those people there, at that time, were not told about what was happening.

And all of this was followed up, at least in some degree, at some part, by hyper policing in the days that followed. For all of those things to be understood, the workings of the community, a unique community, have to be understood. How that community worked. Most of what just described doesn't happen in most places in Australia. So the question of how to ask, how to answer, how did this come about, does involve questions which are very unusual.

And that's why I've already asked some of the questions I have, which are going to lead to our submissions on those matters. Where, in the circumstances, and despite the knowledge of, for instance, police command, local police, and many others, elders in the community aren't consulted at critical moments like this, in order to prevent such things happening again, we have to understand it deeply. We will take very little time in court to pursue those questions. Except at the end of this inquest when there are a number of witnesses coming, including elders from Yuendumu.

In our submission, your Honour, and counsel assisting, I should say counsel assisting, not your Honour, have already effectively made comments on the utility of what's already come from the mouths of the elders of Yuendumu in this court. And the prospect of your Honour meeting with them, and talking with them, will be combined with some expert evidence, and some evidence from senior members of the community coming here. And we will operate within the constraints that we ought to. And we won't take much court time doing it.

But we will certainly strongly submit that in order to understand the circumstances of what we saw on that video the other day, then there needs to be a wide and deep examination, of how the community operates. Those are our submissions, your Honour.

THE CORONER: Thank you, Mr McMahon.

Mr Boe.

MR BOE: Thank you, your Honour. The ultimate submission that the Walker, Lane and Robertson families wish to make, concerning the rulings that your Honour is about to make, is that we simply want the court to just get on with on it, to rephrase counsel assisting's final submission. To that end, there are only three things that we wish to add. Firstly, the way in which counsel assisting has crystallised the position concerning the scope, perfectly reflects that which we have submitted in May, and which we have submitted over the weekend, in the first nine paragraphs of our submissions.

We don't wish to rehearse them.

THE CORONER: Thank you.

MR BOE: As to the issue concerning the text messages. Again, and with all due respect, counsel assisting almost verbatim, read our submissions from par 42 of our primary submissions. And again, of course, we endorse and accept them. For reasons not clear to me, and I'm not being critical, reference to paragraph – subpar (c) was not included in that recitation from par 42. We ask your Honour to consider it, if it assists your Honour, in reaching a conclusion, in relation to the text messages.

THE CORONER: Thank you.

MR BOE: As to the relevance arguments made by Mr Murphy, we respectfully adopt them. That's all we wish to say now.

THE CORONER: Thank you, Mr Boe.

Ms Morreau.

MS MORREAU: Yes, your Honour, I should announce my appearance. I'm appearing for the Brown family, instructed by Streeton Lawyers. Mr Mullins was appearing last week. We merely wish to rest on our written submissions that have been made, both as to the admissibility of evidence in dispute, and to scope. And we respectfully adopt and endorse the submissions on behalf of NAAJA, and on behalf of Parumperoo, before your Honour, on both of those issues.

And of course, the submissions made this morning by counsel assisting on the issue of admissibility. On behalf of the Brown family too, we look forward to starting again, with the evidence tomorrow. Thank you.

THE CORONER: Are there any other submissions at this stage?

Ms Ozolins.

MS OZOLINS: Your Honour, I would just seek to weigh in, very briefly, on just one of the points which certainly the Association says is of interest to all of its members. As I noted in the written submissions submitted a few days ago, the Association's

concerns are centred around what have been expressed as – well they were questions that fell under the broad issues. That seems to have gone by the way side now, but the issues list does foreshadow the places that the various questioning will go.

So with reference to the matters about which the Association, and its very diverse membership, has an interest in. The submissions is limited really, to that which relates to the use or admission of the text messages. And whilst it was previously expressed to be particularly relevant in relation to questions 34 to 39, 35 and 36, it broadly is said to relate - that is the general use of the text messages is said to relate to the supervision, if you like, of police officers.

It had previously been understood that the only evidence produced as raising broad issues of discrimination and cultural bias against member or when the list was reduced somewhat, to involve members, was the material downloaded from Constable Rolfe's phone. Reference has been made, particularly this morning, to other evidence which is said to indicate systemic or institutional racism and therefore that line of inquiry is relevant to the current proceeding, however it seems there is no direct or indirect evidence adduced of the conduct, actions or attitudes on the part of police members collectively, which is capable of raising or establishing what we say is the necessary causal or circumstantial link between the views, attitudes or culture of police members generally or systemically to the death that your Honour is investigating.

I don't want to go through all the messages as other counsel have indicated as well, but there is some concern that the aide-memoire which counsel assisting has produced indicates messages - identified messages between Constable Rolfe and various other people and included in that group are text messages either sent or received primarily before but also there are messages after 9 November which are included and they are presumably intended to evidence a broad range in cultural bias or systemic racism which indicate the negative attitudes towards Aboriginal people generally.

What we would say, your Honour, that even the summary produced by counsel assisting from the report of the many thousand pages of text messages that were sent or received, seems to be limited to that of five police members - not all of whom were or had been in Alice Springs, few of whom were connected with the IRT and with the exception of one of the selected text messages, the members whose texts are listed were not involved in or had any connections with the events of 9 November 2019.

So even if your Honour was to conclude that those few text messages indicate a negative attitude towards Aboriginal people or community police officers, as counsel assisting indicated in her opening, it would be urged to do. It is difficult, we say, to see how the admission of the limited text messages - discrete and sent between no more than 5 to 9 people at various times, in some cases many months prior to 9 November and are currently not connected to other text message streams,

whether or not that gives rise to a legitimate inquiry into a collective attitude, it is questionable when you're talking about an organisation of over 1600 members.

And as I said in earlier submissions, your Honour, the argument now, it might be more of a question of relevance than the scope of the enquiry, but counsel assisting has already indicated that those messages - or some of them, will be put to Sergeant Jolley, for example, when she gives evidence where there is no indication that any of the messages are to or from her, so there will be a broad use of text messages, presumably to establish this collective view amongst police officers which may be fraught with - - -

THE CORONER: Or otherwise.

MS OZOLINS: Sorry, or otherwise in what respect.

THE CORONER: Or the negative to what - - -

MS OZOLINS: Certainly, certainly. But certainly that's not the way it's been discussed today. What we do say, that the messages themselves - these discrete messages - can't establish a systemic racial view on their own and therefore whether or not they are relevant to the current proceeding, given their discrete nature and the few officers involved in the exchange of the selected messages, there is a question whether the introduction of such evidence, which apparently has little probative value, raises any broader line of enquiry. And there is a fear on behalf of the membership that members are tarred with the same brush effectively, which we submit, will not assist your Honour's inquiry and form any findings as to cause or circumstances connected to the death; can't assist in making any recommendation to ensure that a similar event doesn't happen in future or; generally speaking, contribute to this proceeding as a healing process as it has been described..

Thank you, your Honour.

THE CORONER: Just before we come to you I will just see if there are any other submissions.

Did you have any, Mr Hutton?

MR HUTTON: No, your Honour.

THE CORONER: Yes, Dr Dwyer?

A PERSON UNKNOWN: There’s nothing in reply.

THE CORONER: Thank you.

DR DWYER: Just to - I hear what my learned friend, Ms Ozolins says and I just want to put her mind at rest. The purpose of mentioning that these may be raised when Sergeant Jolley gives evidence, as in I intend to ask her some questions, is

precisely what your Honour foreshadowed. That I anticipate the evidence from Sergeant Jolley will be that she would not tolerate any language like we see in these text messages, in her station at Yuendumu; that if she heard that language she might - I'm just suggesting - that she might take that officer aside and tell that officer that that was wholly inappropriate and would not be tolerated in that station. And that she might say that that was the opposite - that sort of language and attitude - was the opposite to what police in community try to foster in terms of their relationships and understanding. And to put my learned friend's mind at rest, because I can understand the concern that she had.

I expect to call in this inquest, evidence from a significant number of police officers about the very positive relationships that they have developed in community with Aboriginal people. Relationships that are meaningful, that are long-lasting and that are built on mutual respect and understanding, and that's what I anticipate submitting ultimately to your Honour is really important for the public safety issues that this inquest will consider.

I anticipate that. It's not clear what all the evidence will be but it is evident from the material on your Honour's brief that there are - because there are, for example, statements from police who have worked for a significant period of time in community who talk about the significance of the relationships that they have developed and the importance of respect.

So I just want to assure my learned friend about that because it is not the case that I will be submitting to your Honour that these are widespread views or that we have evidence of them.

THE CORONER: Well, we don't know what you will be submitting.

DR DWYER: True, until we've heard the evidence.

THE CORONER: Exactly.

DR DWYER: But there will certainly be evidence to the contrary of what is being suggested by my learned friend of her utter concerns.

THE CORONER: Sure.

DR DWYER: And just in relation to the text messages that appear after the death of Kumanjayi, one in particular is from another officer from Alice Springs to Constable Rolfe and the relevance of that I anticipate, your Honour, if it is received into the brief - or if your Honour is going to consider it is that it is suggestive to Constable Rolfe as to what the evidence he should give - what his position should be with respect to what has happened - and that is of real concern in circumstances where the general orders about deaths in custody are that police need to be separated so that they are not contaminated.

And there is another text message which in my respectful submission is disgraceful is reflective of an attitude - it may well be reflective of an attitude about the gravamen with which this tragedy was treated and should be explored as to what it means, with that officer.

And then in terms of the suggestion that these are five to nine officers, let's assume it's five - you've got five officers within Alice Springs and they had, as learned Senior Counsel Mr McMahon said, access to the sorts of firearms that they did and were wielding power and using force, then that is of great concern and I anticipate, your Honour, it will be of great concern to the Northern Territory Police Force. I want to make sure that those attitudes are not replicated elsewhere.

And just finally, your Honour, in terms of the relevance of the text messages that I have pulled out, I am trying to avoid, at this early stage, identifying who those officers are, but they involve senior officers within the - a senior officer within the IRT who was in a leadership position and was in a situation where he was supervising Constable Rolfe and was supposed to be offering him guidance. And I won't say anything more about it in terms of identifying his particular position, that that is of concern.

And we have gone to some lengths to say, as the team of counsel assisting, this is not a commission of inquiry into Constable Rolfe, it is a commission of inquiry set by the boundaries of the *Coroners Act*, but it concerns issues that relate to other offices in the Northern Territory Police Force that go directly to public safety, administration of justice and your Honour's recommendations' function.

And that is particularly the case when you have supervisors. We're not talking about junior officers here in all cases. We're talking about supervisors and that is of, I anticipate, concern.

MR MCMAHON: Your Honour, might I just make one more comment?

THE CORONER: Sure.

MR MCMAHON: It's possibly irregular. I would just like to assure Ms Ozolins, because I did speak more than perhaps the other counsel about this text.

But we certainly take heed of what she said and that just as we would speak firmly against racism where it appears, and we would say that it does appear in various places, we would certainly - as my clients have already said, Mr Hargrave said in this court how much he loves the police.

We would certainly be very quick to support and acknowledge the good policing that does occur and that we already know about. And that will also be said (inaudible).

THE CORONER: Well, thank you for your written submissions which are very detailed and considered and much of which was produced, I know, over the

weekend.

So, I do appreciate your commitment to the process to ensure that we can proceed as soon as possible with the evidence, which I think we all intend to do, are well considered, with your written submissions and the oral submissions and I will endeavour to have a decision tomorrow, precisely at what time, I can't say.

But I do wish to hand down the decision as soon as possible, so that we can in fact proceed with the important evidence that we have already commenced. So, we will, at this stage, adjourn to 9:30. If it doesn't look like we'll be ready at 9:30, we will try and get a message to the parties to give them some notice.

DR DWYER: Your Honour, just a matter of housekeeping, I had intended to tend the brief, which is an option to do at the outset of proceedings. And it just occurred to us over the weekend that it would be unwieldy in the end to tender each exhibit as it comes.

So, we propose to tender the brief and then seek a variation to the non-publication order. That brief, at this stage, however, would exclude the Campagnaro statements and the messages. I had proposed to do that this afternoon.

I'm informed by Mr Officer on behalf of Constable Rolfe, that he just wants the opportunity to identify overnight by virtue of a table, any other evidence relevant to any objections. Perhaps, I'll just let him speak for – if that might be placed on the record, so that we're in a position tomorrow to deal with it.

HER HONOUR: Sure.

MR OFFICER: Your Honour, that will happen overnight, I (inaudible) for reasonable time limits are for Ms Dwyer and should outline any issues for the subcategory (inaudible) concern and I thought that would be able to resolve especially with those exhibits they're going to very prematurely.

THE CORONER: All right. Well, as I understand it, the issues, the objections at this point to any evidence in the brief have been identified and articulated. And I propose to continue with hearing this matter and if there are objections during the course of the hearing, they can be dealt with if and when they arise.

MR OFFICER: Yes.

DR DWYER: Your Honour?

MR OFFICER: Sorry, your Honour. In saying that, that's directly identified by the purposes of this exercise, what we all draw (inaudible) potentially going to the brief at the outset. So, it's the case that most exhibits for example were produced for a (inaudible) witness, in that time, it might be appropriate. I don't anticipate that it's going to be a long list of exhibits, but we're proposing to deal (inaudible).

THE CORONER: I won't be dealing with matters of this nature unless and until they become relevant in the evidence. So, I will consider whether or not there will be anything else that is not included in the tender brief. However, the brief that will be tendered is subject to a non-publication order.

And so it seems to me that we should be able to proceed with the tendering of the brief, subject to the non-publication order and to deal with any other objections if and when they arise.

MR OFFICER: I understand. Thank you, your Honour.

DR DWYER: Your Honour, might I just ask that you extend the existing non-publication order to cover the unredacted Pollack Report (sic) if there is any confusion about that issue. But it's now the unredacted – I beg your pardon, Proctor Report.

THE CORONER: Proctor Report, yes. So, that is now part of the brief of evidence together with the redacated version.

DR DWYER: Yes.

THE CORONER: So, both of those documents are covered by the non-publication order?

DR DWYER: Yes, your Honour, to the extent that there was any confusion previously about other versions available.

THE CORONER: Yes.

And if there's nothing further, we will adjourn at this stage until 9:30 tomorrow.

DR DWYER: May it please the court.

ADJOURNED