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NORTHERN TERRITORY OF AUSTRALIA

CORONERS COURT

A 51 of 2019

AN INQUEST INTO THE DEATH

OF KUMANJAYI WALKER

ON 9 NOVEMBER 2019

AT YUENDUMU POLICE STATION

JUDGE ARMITAGE, Coroner

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 27 NOVEMBER 2024

(Continued from 29/05/2024)

Transcribed by:
EPIQ

THE CORONER: I acknowledge that today we sit on the lands of the Arrernte people and I pay my respect to their Elders, to First Nations people present in court, or following from afar. You are welcome here and I pay my respect to your Elders.

Ms Dwyer.

DR DWYER: May it please the court, your Honour, I appear as your counsel assisting in this matter. I appear with Mr Coleridge, who can't be here today, but has been here throughout these proceedings, and we are instructed by Ms Maria Walz.

THE CORONER: Thank you. I will take other appearances.

MR MULLINS KC: Good morning, your Honour. If the court pleases, my name is Mullins, initials GR. I appear with Ms Morreau, counsel instructed by Prudence Watts, who is not with us today, of Streeton Lawyers.

THE CORONER: Thank you.

MR BOE: Good morning, your Honour. My name is Boe, I appear with Greer Boe, Claire O'Neill, Dan Fuller and Andrew O'Brien, all of whom are unable to be here today for Walker, Lane and Robertson.

THE CORONER: Thanks, Mr Boe.

MR MCMAHON SC: If your Honour pleases, I appear for the Parumpurru Committee with Mr O'Bryan. We're instructed by Doogue & George.

THE CORONER: Thank you.

MR MURPHY: Please the court, your Honour, my name is Murphy and I appear for NAAJA. I'm led by Mr Boulten SC who appears online and also led by Mr Espie, and I appear with Mr Derrig and Ms Mishra.

THE CORONER: Thank you very much.

MR FRECKELTON KC: May it please the court, your Honour, I appear with Ms Burnnard. My name is Freckelton and we are instructed by Ms Lau. We appear for the Northern Territory Police Force, including various specific members of it.

THE CORONER: Thanks, Dr Freckelton.

MR OFFICER: If your Honour pleases, Luke Officer appearing for Mr Rolfe, led by Mr Abbott KC, Mr Edwardson KC and Mr Merenda.

THE CORONER: Thanks, Mr Officer. Are there others? Sorry.

MS OZOLINS: Sorry, your Honour, I was waiting for Mr Read. My name is Ozolins, I appear with Ms Young for the Northern Territory Police Association.

THE CORONER: Thanks, Ms Ozolins.

MR HUTTON: May it please the court, your Honour, my name is Hutton and I appear on behalf of NT Health.

THE CORONER: Thanks, Mr Hutton.

MR MCCARTHY: Good morning, your Honour. My name is McCarthy and I appear on behalf of the former Territory Families Housing and Communities.

THE CORONER: Thanks. I think we're up to you, Mr Read.

THE ORDERLY: It's on mute.

THE CORONER: Mr Read, you're on mute. That's okay. I can see that you are there, and Mr Read is for Constable Eberl and Constable Hawkins.

DR DWYER: Yes, that's the case, your Honour, Officers Eberl and Hawkings. Your Honour, might I just point out also that, in court, we have a number of family members, and I know your Honour particularly welcomes them to this court, Eddy and Lottie Robertson are here, Rakeisha Robertson is here, Derek Williams and his father, Warren Williams and Alice Walker-Nelson.

THE CORONER: Thank you.

DR DWYER: Your Honour, might I also say for the record that a Luritja interpreter who has assisted us throughout these proceedings in here in court and we're very grateful for her assistance.

THE CORONER: Thank you so much for being here. We really appreciate the work that you're doing.

DR DWYER: Unfortunately, a Warlpiri interpreter could not be available, and it's one of the difficulties we have experienced is the struggle to get interpreters who are available, and your Honour might reflect on that further. But we did order a Warlpiri interpreter and sadly, none has been available.

THE CORONER: Thank you.

MR FRECKELTON: Could I also indicate to your Honour that the Deputy Commissioner of the Northern Territory Police Force, Mr Dole, is present, as is from the Executive, Ms Leanne Liddle.

THE CORONER: Thank you very much.

MR BOE: Your Honour, may I just mention that the Lane family were scheduled to arrive. Their vehicle broke down, so they haven't been able to come, and one of

their family members has been hospitalised, but they have a great interest in the outcome of these proceedings.

THE CORONER: Thank you. I'm sorry to hear about that. I hope that's all successfully resolved.

MR BOE: Yes, thank you, your Honour.

THE CORONER: Yes, Dr Dwyer.

DR DWYER: Thank you, your Honour. As your Honour knows, time allocations have been given this week for oral submissions in reply and/or any oral submissions that parties wish to make. We have only two days for that process and so I just thought that I would start by setting out a little bit about the process that has been engaged in to date and will be engaging over the next two days.

The Inquest into Kumanjayi's passing began in early September 2022. It was scheduled to run for three months and to finish in early December 2022. It has obviously taken much longer than was anticipated to complete these proceedings and these are the final stages.

The reason it has taken much longer is not simply due to one reason. Firstly, certainly, the issues were more complex and required further evidence. but the primary reason that the length of the Inquest has blown out is because there were a number of legal challenges made by other parties to proceedings, all of which were unsuccessful, but which had to be accommodated by your Honour.

That is not a complaint by counsel assisting that those legal challenges took place, but it is just an explanation that the public should understand as to why these proceedings have taken longer than anticipated. And it has also been important that we understand the imperative of finishing these proceedings and allowing your Honour to get on with the important ask of writing your findings.

Throughout this process, in my respectful submission, every effort was made to be careful, to be thorough and to be fair and to engage the community in this process. And these oral submissions continue with those principles. Counsel assisting is mindful at all times of procedural fairness that must be afforded to parties.

Procedural fairness is a flexible principle, it depends on the circumstances but it is certainly accepted that in the Coronial context it includes that before a decision is made which is adverse to a person's rights or interests, they must be given an opportunity to provide documents or give oral evidence that contradict the adverse information.

In this case there has been ample opportunity for parties whose interests are affected to respond to any potential criticism or comments that your Honour might make in findings that are averse to them.

All parties have had an opportunity prior to today to put on written submissions. There was no word limit to the written submissions that could be received. Your Honour has received written submissions from counsel assisting that are some 297 pages and, of course, I can't hope to cover them in the time slot I am allocated, which is two hours.

Your Honour has received submissions from the Northern Territory police, from the Northern Territory Police Association, from NAAJA, from NT Health, from NT Housing, from individual officers including Rolfe.

After the exchange of submissions there was a further opportunity to put submissions in reply which many parties have taken the opportunity to avail themselves of including parties for the families and Mr Rolfe.

There are some 1,990 pages of written submission for your Honour to absorb.

In initial submissions put on behalf of Mr Rolfe at par 205, Mr Rolfe contends that if the Coroner, contrary to the submissions advanced in those written submissions, intends to make any adverse findings against Rolfe there is a duty to give him notice of that intention and an opportunity to make submissions with respect to it before moving to final publication of any findings or comments.

That submission is, with respect, misconceived. This is the opportunity that is the opportunity that has come to date and the opportunity today, to respond to any potential criticisms.

In some commissions of inquiry that I am aware of there is sometimes - and often - sometimes in lieu of written submissions, a draft finding, but that is not the process that is routinely done in Coroner's courts. It is not a process I have ever encountered in the Northern Territory or in New South Wales in literally hundreds of inquests that I have been involved in.

There is no obligation to disclose provisional findings or conclusions, see for example *Minister for Immigration and Citizenship v Szgur* [2011] HCA 1 241 CLR 594 and in the Northern Territory context, *Lawrie v Lawler* [2016] NTCA.

The Walker Lane Robinson family helpfully deal with this also in some detail in their submissions.

The process being followed here in relation to an exchange of submissions is the ordinary process follows in the Coroner's Court in the Northern Territory, New South Wales and other jurisdictions throughout Australia. The ordinary process is being followed here and every opportunity for procedural fairness has been provided for.

At the end of this week of submissions I propose, your Honour, to circulate draft recommendations that in my respectful submission, I certainly will hope to make practical, sensible and capable of implementation. I do not propose to make any

recommendations in relation to individual officers but rather, directed to government departments or institutions and I suggest, your Honour, that parties be given 14 days to respond to them so that instructions can be taken.

I anticipate being able to circulate those draft recommendations next Tuesday and 14 days hence would make it 17 December. That will allow your Honour then to get - to have Christmas and January period and beyond to think carefully about your findings and recommendations.

As often happens, I just note this. Some reforms have already been implemented as we have gone through this Coronial process where issues have arisen and departments have had the opportunity to respond to them and I note in particular that I anticipate your Honour will hear from Northern Territory Police about a number of changes or reforms or improvements that have been made on reflection.

Take for example, at par 1,322 of the submissions on behalf of Northern Territory Police in relation to parts of the recruitment process and institutions are to be applauded, your Honour, in my respectful submission for taking initiative where they have done so there is likely to be no need for a further recommendation and your Honour can just note that in your findings.

Before I commence in relation to the evidence then your Honour, is just one further thing about the Coroner's process.

Your Honour's role is, of course, governed by the *Coroners Act*. Section 15 of the Act provides that an inquest is mandatory in these circumstances. So that means your Honour was required to have an inquest in relation to Kumanjayi's passing and the only other section of the Act I want to refer to is s 26, which is an important one. It states that:

> "Where a Coroner holds an inquest into the death of a person held in custody or caused or contributed to by injuries when they are in custody, the Coroner must investigate and report on the care, supervision and treatment of the person whilst being held in custody or caused or contributed by injury sustained while held in custody and may investigate and report on a matter concerned with public health or safety in the administration of justice relevant to a death."

The fact that the *Northern Territory Coroners Act* has picked up and put in a section that requires a Coroner to report on the care, supervision and treatment of a person in custody comes directly from the Royal Commission into Aboriginal Deaths in Custody reporting in 1991.

A Coroner who holds an inquest into the death of a person in custody must make such recommendations with respect to the prevention of future deaths in similar circumstances as the Coroner considers to be relevant.

The Northern Territory Police Force in their lengthy and helpful and detailed submissions describes Kumanjayi's death as, "tragic and avoidable." With respect, your counsel assisting team agrees with that description.

It is another reason why this process is so important. Kumanjayi's death has been devastating for his family, his community and it has caused great angst and suffering from the many individuals involved including the officers involved on 9 November and, in particular, those based permanently at Yuendumu or who have worked at Yuendumu. It has caused grief in the broader Northern Territory Police Force and recommendations will be aimed at preventing a similar tragedy.

I have already mentioned I can't hope to cover all the areas in my written submissions or in reply to each of the submissions in the time allocated to me but I propose to outline six broad areas and, in the process, reply to some of the more significant points made by other parties and I otherwise rely on the written submissions.

Counsel assisting maintains the position adopted in written submissions and doesn't withdraw or retreat from them.

So there are six areas that I propose to outline. Firstly, starting with Kumanjayi's life and the circumstances in which he grew up in Yuendumu, which would lead to recommendations relating to better supports for youth and community from the earliest stages of a young person's life, to minimise the risk of similar death.

Second, the events of 6 November 2019 and the attempt to arrest Kumanjayi by officers Hand and Smith.

Third, issues relating to former Constable Rolfe's history and the relevance of that history and conduct to 9 November 2019 including the process of recruitment, instances of his use of force, evidence of attitudes of racism, sexism and lack of respect for community police and poor mentoring.

Fourth, the events of 9 November 2019 and the attempted arrest by former Constable Rolfe and Officer Eberl.

Fifth, in brief, some of the actions after Kumanjayi was shot.

And finally, the need for better supports for our police officers in the Northern Territory in order to assist them in their challenging work and to minimise the risk of similar events.

It is obvious from the length of the submissions that although your Honour is bound by the Act and this is not, of course, a roving Royal Commission, as parties are fond of reminding Coroners at times. The process would be inadequate if the court looked solely at the events of 9 November in isolation.

In order to fairly evaluate the circumstances of Kumanjayi's death and in order to make meaningful recommendations, your Honour will view the evidence fully and fairly and in the context of the environment.

There's no room for black and white thinking. There's not – this is not about taking sides between Kumanjayi and officers involved. All of those persons who I'm about to talk about are more than the sum of what happened on 9 November. And the court understands that.

Starting then with Kumanjayi's life and the circumstances of Yuendumu. The final stage of this inquest comes just two days after your Honour released findings that were detailed into the deaths of four women as a result of domestic family violence. And your Honour has highlighted the scourge of domestic family violence in the Northern Territory and the fact that the statistics in this jurisdiction far exceed the jurisdictions throughout Australia.

Your Honour said this in your findings at pars 115 to 116:

> "We must acknowledge and understand the connection between the child being exposed to domestic and family violence and that child being involved in the youth criminal justice system."

A 2022 Australian Institute of Criminology research paper found that 65 percent of children involved in the justice system had been exposed to family violence.

In the Northern Territory context, a recent analysis by the Office of the Children's Commissioner found of the children aged 10 to 13 in youth detention in the Northern Territory, 94 percent of those they spoke with had been exposed to family violence. There is frequent media reporting about young people in the Northern Territory committing crimes like house and shop breaking and stealing cars which generate fear and resentment in the community.

Given the statistics, it is likely that many of the young people on the street are on the street because their homes are not safe as one parent is the victim of violence at the hands of another. Your Honour, Kumanjayi Walker's story exemplifies exactly what your Honour has said in the context of the domestic family violence inquest. Because as set out carefully in the submissions of the Brown family, from the age, at least of four to 10, Kumanjayi was exposed at home to a relationship, and I quote, "Plagued by excessive alcohol consumption and domestic violence."

What your Honour's quoted from the Office of the Children's Commissioner was that of the children aged 10 to 13 in youth detention that they spoke with, 94 percent had been exposed to family violence. Kumanjayi would have fitted right within that statistical analysis. In addition to that, exposure to trauma and violence. The court heard evidence that it's likely he was born with FASD, that is foetal alcohol syndrome disorder, and he experienced the impact of that disorder, including poor impulse control.

He also experienced hearing loss and related difficulties at school. He had periods of being teased. He was homeless as a result of those behaviours. These are dealt with carefully in the submissions of the families of Parumpurru. And your Honour, I commend to you, in particular, the submissions of the Walker, Lane, Robinson family, for example, at page 16. Where the submissions cite Sergeant Jolley, who obviously cared about Kumanjayi during his lifetime and was very upset by his passing.

You'll see that she was taken to a note in submissions where she was spoken to on 7 April, prior to Kumanjayi's passing, and she advised that because of his behavioural issues there was a perception he was no longer welcome at Yuendumu. Sergeant Jolley explained that while he was cared for, there was no responsible adult to look after him and he never received care like a child deserves. That was her concern for him in the community.

She said that Kumanjayi walks around the community. He was suspected of breaking into places and there was a concern that he had a negative impact on young children. She was concerned that around that time he was sleeping on the floor at the church in a dirty swag. And she said, "He's a troubled young man through no fault of his own."

It was put to her that there was no mental health or cognitive assessment done for him in 2017. And she said she agreed that that was troubling, and it appears to have let him down. And that is the case. Your Honour, we seek then findings that are set out in some detail in the submissions of counsel assisting at par 20 – sorry, at page 21. I might just hand your Honour a copy of those submissions. I think your Honour has the other submissions on the Bench.

At page 21, par 62, in respect of Kumanjayi's story, your Honour should find that he suffered from health conditions that impacted negatively on his behaviour and contributed to conflict with authority, including foetal alcohol syndrome and hearing loss. He was exposed to trauma, particularly domestic violence, which likely contributed to his own negative behaviours, including his exhibition of violence.

He was capable of kindness and connection. He thrived in structured environments. And his story illustrates starkly the need for early intervention and appropriate support structures. Your Honour will recall that Kumanjayi thrived in the environment of SevGen in Queensland, with a six-month structured program, and he thrived in the six-week program at Mount Theo. They were structured environments with good supports, away from alcohol, and with people who focused on trauma informed response.

There are a number of recommendations that I will suggest to your Honour follow from that. But in particular, one that comes from the expert evidence of Dr Botha and Dr Boffa and Dr Donna Ah Chee of Congress. Your Honour will recall the evidence that they gave in relation to the need for early intervention to deal with children who've been exposed to alcohol and trauma. They are truly experts in their field. And it's clear from the evidence that your Honour has heard, that there are so

many more children like Kumanjayi who need that intervention now if we're to prevent adverse interactions with the Northern Territory Police.

So I propose to direct to your Honour a recommendation along these lines. To Northern Territory Health, that primary health care practitioners should be arranged and funded to screen all children under five in clinics in remote communities for developmental delays that could indicate FASD, using the ASQ ages and stages questionnaire development assessment tool, which was culturally adapted. There's an equivalent ASQ track.

And that if there's an indicator for FASD, they should be referred to an early childhood intervention plan under the NDIS and resources devoted to the implementation of that plan. And secondly, that Northern Territory Police and Health should work together to design a process for referral of children who have repeat negative intervention with police – interaction with police, to primary health care practitioners for that ASQ-Trak screening.

To prevent another tragedy, we need a wholistic approach that recognises the strengths and challenges in the children of Yuendumu and in similar communities. That's why the submissions of your counsel assisting team and others, including Parumpurru, set out the history of Yuendumu and why your Honour has the work of historians and anthropologists to draw upon in the brief.

To understand the trauma of those in Yuendumu and surrounds and the reasons for the ongoing poverty for children and young adults, it's important to understand the history, not just of the Coniston Massacre – although that's important and your Honour has evidence of it, and it's seeped into the memory of the community. But also the fact that sedentarisation of the people of Yuendumu and the removal of Warlpiri and Luritja and communities from fertile land, the destruction of their habitat, the unsuitable housing, the disruption of culture, has an ongoing impact and relates to the poverty of circumstances in which children like Kumanjayi now grow up in.

To improve the lives of children and young people like Kumanjayi, the court will understand the deficits and work to improve the strengths of the community of Yuendumu. It's why, in my respectful submission, there should be a recommendation for culturally appropriate housing, such as the suggested models by Dr Quilty and sustainable youth programs, such as those once run by WYDAC that had ground to a halt, tragically, during the time of the inquest. But we hope are currently being enlivened.

It's why Aboriginal Elders should be empowered to lead those changes. One recent development that appears to be extremely promising is referred to in the submissions of the Parumpurru Committee at par 265. And that relates to the Kurdiji Wita leadership group. And I'll leave Mr McMahon to submit more in relation to that.

In chapter 7 of your counsel assisting's written submissions, there are draft recommendations directed to practical strategies to prevent youth crime and to stop

the cycle of conflict that Kumanjayi experienced. I move now, your Honour, to topic 2.

Stressing, of course, that this is just a brief summation of the detailed written submissions. But topic 2 in my oral submissions relates to the events of 6 November 2019. Ultimately, the submission made by your counsel assisting team is that your Honour would not be critical of any of the efforts of Senior Constable Chrisotpher Hand and Sergeant Lanyon Smith on 6 November 2019.

On the contrary, they were thoughtful officers who cared about community and showed great restraint on that day, after attempting to arrest Kumanjayi when he pulled out a small axe and waved it in a way that was menacing and would have been frightening at the time. Your counsel assisting team urges your Honour not to downplay the seriousness of that. There is no need to.

It is accepted that Kumanjayi was loved, was capable of great love and that he did not have the supports that he deserved when he was growing up. And he was, in Sergeant Jolley's language, let down by not having had the supports, including testing and support to overcome the FASD and trauma. But what it led to was a conflict with police on the 6th and the 9th that was disturbing.

Lottie and Eddy Robertson are respected Elders and when they were speaking to Sergeant Frost the next day about what happened, they clearly understood the seriousness of the events of 6 November. They were sorry that it happened. And it would have been genuinely frightening for the police officers involved.

The reason that it was not anticipated by Officers Hand and Smith, is that Kumanjayi had been arrested without incident on a number of occasions prior to that time. Those two officers were not expecting this behaviour. Unlike the officers on 9 November, which I'll come to shortly, there had been no recent event where Kumanjayi had exhibited violence of that nature, which would have elevated his risk profile.

As the court knows, of course, Kumanjayi breached his suspended sentence in October 2019 by removing an electronic monitoring bracelet, just one week after his release to an alcohol rehabilitation centre. That wasn't a technical breach. But it is a shame that there was no opportunity to have him return to the program after that point. And your Honour might make comment about that in your findings. But no evidence was called from the rehabilitation facility where he had been residing before the breach and your Honour would not be critical of that facility.

The breach of the order led to a warrant being issued for his arrest. Some of the families for Kumanjayi urge your Honour to be critical of Officers Hand and Smith for attempting to arrest Kumanjayi on 6 November, particularly when there was a funeral for family planned that weekend. But with respect, I make a number of points to submit to your Honour that you should not be critical of Officers Hand and Smith.

There had been a series of break-ins overnight in the nurses' homes, which would have been upsetting and disruptive and frightening. Kumanjayi had previously broken into houses. It was not a stretch for police to think that he might have been involved. True it is that after the break-ins, when fingerprints were dusted, Kumanjayi's fingerprints were not found. That doesn't mean he wasn't involved. And in any event, proactive policing would have justified further enquiries as to his whereabouts and whether he was involved.

Second, there was a warrant for his arrest. And third, the attempted arrest by Hand and Smith occurred on a Wednesday. They were not aware of the funeral plans for Friday. And I commend to your Honour the evidence of Officer Smith on 15 September 2022, at transcript page 567, and Officer Hand on 19 September at transcript page 648.

The fact that police did not know about the funeral speaks to a disconnect at that time between what was happening in community that was culturally significant and what was happening with police. Had there been a better conduit between the community and police, those funeral arrangements may have been taken into account. They might have then been the subject of discussion, for example, with ACPOs or appropriate Elders.

The evidence suggests the need for a better source of communication and conduit for communication. And that is one reason why Kurdiji Wita may be so helpful and why there's room for further reflection on that and potential recommendations.

By November 2019 Officers Hand and Smith were experienced and effective community police officers. Your Honour has heard them referred – has heard community police officers referred to as bush cops, sometimes in a disparaging way. But community police officers, your Honour heard, perform an essential role. Many police officers are very proud to serve their communities and so were Officers Hand and Smith.

They were skilled, empathetic, dedicated, hardworking police officers in the Northern Territory who cared about the community. Lanyon Smith graduated from police college in February 2007. For most of his policing career, since about 2010, he had been working remotely. He worked in Haast Bluff, Papunya, Imanpa, Hermannsburg, Ntaria, Kintore, Yuendumu, Willowra.

He spent his early years as a child in Queanbeyan, not far from where Mr Rolfe grew up. And he had not had much experience working with indigenous people before he worked with the Northern Territory Police. But as Mr Coleridge of counsel put it to him in his questioning, he had a real tour of the southern desert, and he appreciated the importance and benefits of that work.

Officer Hand graduated from Northern Territory Police in December 1994 – 1995. He went out to Yuendumu in 1997. He spent time in the Mataranka Community. He spent time in Minyerri, Jilkminggan, Mulgan Camp and he relieved

in some of the remote communities in the southern region and spent time in Wadeye. He also worked in the city areas in Darwin and Alice Springs.

In terms of what happened in the house on 6 November 2019, your counsel assisting's written submissions suggest to your Honour that after Kumanjayi produced the axe, Officers Hand and Smith showed significant restraint and courage. The court would find that they handled it well, with a minimum amount of forced, based on their knowledge of Kumanjayi and their experience in the community with him.

Your Honour may find relevant the evidence given by police psychologist Mr Van Haeften on 3 November 2022. In cross-examination by Mr Officer in relation to the events of 9 November, this was put to him. Mr Officer said:

> "So for example, if a police officer has never been involved in a situation where in very quick time they are subjected to a rapid and violent assault, that wouldn't necessarily be one of those instances where you say they'd been desensitised because of an over exposure to situations, would you. It's completely different to the repetitive conduct that might give you desensitisation. Do you agree."

And Mr Van Haeften said:

> "I agree. Exposure to a unique event that someone hasn't experienced before, is different to repeat exposure to an event."

Mr Officer continued:

> "Yes. And so in those unique events, when we talk about characteristics and having in your mind your qualification, which I read to you -" he's a psychologist "- is it the case that an individual in that situation would fall back on their training and decisions they make in that moment."

And he replied, the psychologist with his expertise:

> "I would say the decisions that they make, as well as the training, will be influenced by their attitudes and values."

In that moment, faced with a decision about how to react to Kumanjayi producing the act, with their knowledge and experience, those police officers didn't think Kumanjayi wanted to hurt them. They stood back. They gave him room to escape. Their values were on display on that day. Their attitudes and their values. Their values were exemplified in the email exchange subsequently between Officer Hand Assistant Commissioner Wurst.

On 7 November 2019, Officer Wurst sent an email to Officer Hand checking on his welfare, which was commendable. In the course of the reply, Senior Constable Hand writes, "I don't think he wanted to chop us up. He just wanted to escape.

No one was injured and that's the best result, in my view. I trust all is well with you." No posturing, no exaggeration. Rather than celebrate the use of force, Officer Hand celebrates the fact that no force was used, and no-one was injured and that was the best result, in the view of Officer Hand. Both officers would have impressed your Honour as mature and credible and of significant value to the police and the community of the Northern Territory.

I come now to a third topic. Former Constable Rolfe's history and the relevance of it to understanding the events of 9 November. Those events cannot be seen in a vacuum. Your counsel assisting team rejects the submission made on behalf of Mr Rolfe, that examination of the cause or circumstance of Kumanjayi's death, insofar as it relates to Mr Rolfe, requires only an understanding of the events of 6 November to 9 November 2019 since they are the only dates that he had any involvement with Kumanjayi.

I can understand why that is put on his behalf since it would avoid scrutiny of behaviour that is highly problematic. But that behaviour is relevant to an understanding of the subsequent events on 9 November.

Contrary to the complaints made on behalf of Mr Rolfe, scrutiny of those events during a Coronial investigation is not an example of an adversarial style of inquiry. It's not done in order to be overly critical of Mr Rolfe or demonise him.

He is no doubt a young man with considerable intellect and skill. He is more than son of what happened on 9 November and he has had to endure the stress of the trial that followed Kumanjayi's death.

His actions should be seen in context and the positive aspects of his policing put forward on his behalf by those who appear for him will no doubt be taken into account by your Honour. It also must be accepted that he walked in a stressful and demanding job where he was exposed to traumatic events.

At times in the Northern Territory Police, he got poor supervision and poor mentoring and his mental health had deteriorated by 9 November 2019 as his text messages demonstrate although he did not alert his supervisors to that and neither did the senior officer who he exchanged text messages who became aware of a deterioration in his mental health.

But Mr Rolfe's legal team urges your Honour not to sugarcoat what happened with respect to Kumanjayi's behaviours on 9 November and neither can your Honour sugarcoat the actions of Mr Rolfe.

On numerous occasions in the leadup to 9 November 2019 and on that day, he acted in ways that were undisciplined, ego driven and contemptuous of authority. Particularly contemptuous of a female community police officer Sergeant Frost and those attitudes are relevant to the death of Kumanjayi Walker.

Ultimately, and I'll take your Honour to these submissions shortly, the evidence shows that Mr Rolfe was a man whose ego was wrapped up in his use of force and ego had a lot to do with the tragic events of 9 November 2019.

(Inaudible) humility and restraint of the officers on 6 November 2019 and I contrast the humility and care demonstrated by senior officer like Superintendent Nobbs, Sergeant Frost, Assistant Commissioner Wurst and colleagues like Hawkings and Eberl in the IRT when they reflect what happened on 9 November and they brought their reflections to this court.

Perhaps, your Honour, Mr Rolfe could have been shaped to be a more disciplined officer with better mentoring and a better disciplinary process and a system of acting on red flags. Perhaps some of those tendencies and problematic attitudes could have been brought into line but this court will never know.

In the submissions of counsel assisting, we've carefully set out former Constable Rolfe's brief career in the Northern Territory Police and we stand by the findings urged of your Honour.

For example, there are findings urged on your Honour in relation to the recruitment process that Mr Rolfe engaged in at par 234. It's noted that Mr Rolfe applied to join the police force on 2 February 2016.

Three broad issues emerge from Mr Rolfe's application to join the Northern Territory Police Force. There was evidence of dishonesty by Mr Rolfe during the application process and that is set out carefully.

There was evidence of the results of psychometric testing of Mr Rolfe when he participated in the application process that should have been red flags that could have been come back to and reviewed.

But there was evidence in relation to the decision by the Northern Territory Police Force not to seek Mr Rolfe's ADF file. That is his defence file which meant that they did not find out about his dishonesty with respect to a previous disciplinary process in the Army.

Throughout that par 236 we've taken some care to identify what the dishonesty in that application process was and I don't need to read it onto the record. But having found the primary facts relating to Mr Rolfe's dishonesty which included the failure to disclose the sign in Queensland for public nuisance, violent behaviour and the failure to disclose that he had previously applied to join the Queensland Police Force your Honour would find that lied in his application to the Northern Territory Police Force in order to improve his chances of success as an applicant in the Northern Territory Police Force.

And your Honour is entitled to have regard to the body of evidence in relation to Mr Rolfe's dishonesty when determining whether or not it's probable that he told a lie on a particular occasion.

Your Honour should also find that the Northern Territory Police Force recruitment process at that time was inadequate or deficient. It didn't take the necessary steps to substantiate the self-reports by applicants in relation to the ADF. And because of that Mr Rolfe's dishonesty wasn't identified.

In relation to psychometric testing as set out in par 241, it revealed three issues of significance. After making a mistake Mr Rolfe was less likely than others to accept responsibility. He may brush off the significance of the error, seek to minimise his own role or to blame others.

Second, the aggression score was above average and it noted that whether he will act with firmer assertiveness or frank aggression cannot be determined from this scale alone.

Third, the friction between Mr Rolfe and his father was a pattern frequently found to be associated with later resentment of authority figures in highly structured organisations in which employees are expected to comply with strict procedures.

That psychometric testing didn't mean that Mr Rolfe wasn't or shouldn't have been eligible for the Northern Territory Police Force. But it was a powerful too where if there were red flags in the future it may have been of assistance to the Northern Territory Police Force.

Certainly in this inquest some of those issues raised were evident. Your Honour should find, with respect, that the psychometric testing while, by no means conclusive, ought to have been considered by those responsible for supervising Mr Rolfe when concerns began to be raised from late 2018 about his use of force and his dishonesty.

To adopt what your Honour's previously said in rule number 3 what the police force learned about Mr Rolfe during his recruitment called for a greater degree of ongoing supervision and/or assessment to determine his suitability as a police officer and, in particular, his suitability for deployment in a tactical team like the IRT.

In written submissions from par 163 your Honour is urged to make findings in relation to Mr Rolfe and the inadequacy of his supervision and lack of discipline by the Northern Territory Police Force at times.

Put briefly, and this is at par 164 the evidence demonstrates that Mr Rolfe was a man with a tendency towards violence and who had expressed negative and racist beliefs about Aboriginal people and derogatory beliefs about bush cops and more senior female officers.

He was prepared to give accounts, including in evidence to this inquest, of his use of force that were dishonest. He had little regard for authority and he was contemptuous of more senior officers, particularly when they were critical of him or

his conduct or where he, a junior constable with less than three years' experience as police officer, thought he knew better.

If your Honour finds those immediate facts proved they are highly probative in relation to the cause and circumstances of Kumanjayi's death whether by reasoning they tend to tendency reasoning because they shed light on Mr Rolfe's character and state of mind or because they go to his credibility as a witness in relation to the events of 9 November.

In addition to the proposed findings about Mr Rolfe, that should be considered in the context of findings of the failure of the Northern Territory Police Force to adequately supervise or discipline him at times.

Paragraph 166 we set out a summary of the findings sought with respect to Mr Rolfe and they're not resiled from having read the submissions in reply.

In respect to the attitudes held by Mr Rolfe that increase the probability of Kumanjayi Walker's death they are these - and I stress, your Honour, they increase the risk of what happened on 9 November.

Mr Rolfe held and expressed overtly racist attitudes towards Aboriginal people. To the extent that he gave evidence of a broader culture of racism within the Northern Territory Police Force your Honour will have to weigh up that evidence - your Honour will have to weight up the entirety of the evidence of Mr Rolfe and you may accept some of it and reject others.

The evidence that he gave belatedly, of racism, particularly the certificates in the TRG was self-serving and it's difficult to try and comprehend whether or not Mr Rolfe was impacted on it himself, that is at least in relation to the certificates, when he was a serving officer, but certainly the evidence he gave of some police officers exhibiting racist language and behaviour was borne out by the fact of the certificates, the evidence of former Officer Campagnaro and his own evidence, that is the text messages which revealed some officers had engaged in racist language and were racist.

Mr Rolfe expressed and worked with other officers who were likely to have reinforced sexist attitudes towards female police officers. He held, expressed and worked with officers some of whom reinforced derogatory attitudes towards community police or "bush cops". He had little regard for authority or the rules - at least where it didn't suit him. It provided an opportunity for him - in his words - "To get some cowboy shit done" in, in his words, "The wild west" and that increased the risk of what happened on 9 November 2019 happening.

In respect of Mr Rolfe's use of force in particular, it is important to understand why that is relevant to your Honour's consideration of 9 November 2019. Mr Rolfe as a man whose ego was wrapped up in his use of force and who took pride in - and derived a sense of worth from - expressing his dominance over others. They were generally Aboriginal men and expressed that dominance through the use of force.

Where Mr Rolfe used excessive force, he advertised it to some of his colleagues because he thought it was funny. When taken together with the myriad examples of Mr Rolfe sharing media about his use of force inappropriately and potentially illegally, or boasting about his use of force, that conduct is reflective of his fascination with violence or at lest his glorification of it and the sense of impunity with which he approached his work as an officer in the Alice Springs Police Force.

He had a tendency to use excess force and your Honour may find that where one use of force option was reasonably open to him he would prefer to use the more forceful one. In his own words to Ms Campagnaro, he was always the first to get his gun out. He had a tendency to rush into situations without regard for his and others' safety. He had prioritised getting his man over virtually all other considerations. He had a tendency to seek out situations in which force would be necessary because he found combat situations exhilarating because they provided him with an opportunity to demonstrate his prowess as a young, fit and effective police officer and that contributed to his sense of self-worth.

Mr Rolfe had - and he knew that he had - a tendency to overreact or, to quite him, "lose his shit" when people pressed his buttons.

Towards the end of his time as a police officer he was aware that he was becoming increasingly volatile in the context of his declining mental health and that is clear from the text messages with CV. He had a tendency to act dishonestly in the context of his use of force and taken together, Mr Rolfe's tendencies to seek out situations in which force would be necessary and to use force excessively or inappropriately, the pride he took and the amusement he derived from his use of force, even when excessive, and his inability to accept criticism of any excessive use of force demonstrate that he had warped attitudes towards the use of force that made him dangerous as a front line police officer as at November 2019 because it increased the risk of what happened on 9 November 2019 happening.

And so you can look at the body-worn video of Mr Rolfe on 9 November 2019 and hear submissions about him using polite terms - or terms he thought were polite prior to the interaction with Kumanjayi Walker and you can hear him use a soft voice but that doesn't detract from anything that went beforehand and is clear evidence your Honour has of the tendencies to use excessive force on occasion and to rush in where other options were open.

In respect of Mr Rolfe's credibility, your Honour would find that he was prepared to dissemble and discord and he does not have a credibility as a historian in relation to his use of force.

You can have regard to his demeanour as a witness. You can have regard to his inability to make reasonable concessions at times. You can have regard to prior lies. You can have regard to the steps that Mr Rolfe took on other occasions to avoid accountability for the use of force.

Your Honour should find for the reasons set out in counsel assisting's submissions that at various levels of the Northern Territory Police Force hierarchy there was a failure to adequately supervise discipline and hold Mr Rolfe to account.

Just before I move on from the issue of racism, your Honour, I want to address one submission in respect to the written submissions made on Mr Rolfe's behalf.

It is submitted on his behalf - and I quote from the submissions - the primary submissions at par 7 of Mr Rolfe:

> "The notion that this was some sort of racially-motivated hit job is rejected and the foundation is not borne out by the evidence."

That is not the submission of counsel assisting. Counsel assisting has never suggested that this is a racially motivated hit job. That is simplistic and it misinterprets the careful analysis set out the written submissions of your counsel assisting.

Great care is taken in those written submissions to explain the connection between the problematic attitudes and behaviour demonstrated by Mr Rolfe and Kumanjayi's death on 9 November. Not just the issue in relation to racism but also issues in relation to contempt for senior figures, contempt for female police officers and use of force.

There was clear evidence, in my respectful submission, in Mr Rolfe's text messages of racist attitudes and evidence in his text messages and use of force of him being desensitised to injury cause to Aboriginal people suspected of being involved in crime.

I don't need to remind your Honour of the racist text messages and I won't here. An example of desensitisation is clear in relation to the exchange of the body-worn video footage with members of his family and others where he said, and I quote - "I treated" - an innocent person he is talking about - "to the old illegal shoulder charge" and laughing about that exchange.

Mr Rolfe accepted, in fact, that the use of racist language might lead to some people becoming desensitised - but not for him, and this is on 26 February 20224 at page 5138.

Your Honour, I understand we've lost the livestream but I intend to keep continuing unless somebody - unless your Honour would like me to pause?

THE CORONER: Do we have any indication as to how long it might take to fix?

Three minutes, we are told.

DR DWYER: I will just pause, your Honour.

THE CORONER: I think we can proceed.

DR DWYER: May it please the court. Your Honour, I just had referred to a particular text message. I just remind the court that this text message in relation to the illegal shoulder charge came on 25 September 2019.

Your Honour will recall that, in the cross-examination of Mr Rolfe, a lot of these messages were put chronologically so your Honour could see the deterioration in behaviour and in mental health, and that is followed in our written submissions. The 25th of September 2019 is close in time to the events of 9 November 2019.

On that day, Mr Rolfe sent the video of a foot chase to his family in breach of Northern Territory Police Force policy and possibly the law. In his message to his family, he again took pride in the dominance he was able to exert through force over "the locals", his words. And he expressed amusement that he had hospitalised a man who police had not in fact been trying to arrest. A text is:

> "The main chase body-worn is mine. Ha ha, treated him to the old illegal shoulder charge. Because I wear body armour, I'm not as rapid as the locals initially, but they still can't outrun me. Turns out the dude wasn't who we were looking for and is now in a sling for nothing. Ha ha, don't run from police."

In relation to the issue of whether or not language can desensitise police officers, Mr Rolfe said - I asked him:

> "Do you think now you have more awareness about how problematic the use of that language is than when you did when you were in the police force?"

And he replied, "One hundred percent."

This is at transcript 5138 on 26 February this year.

When I asked him, "Can you tell her Honour about that?", he said:

> "Well, I can only speak for myself. I know that there are studies that do show the normalisation of that language, those racist language, can dehumanise someone. And that's been used in the past by military in war situations. It is used as a tool to dehumanise the enemy. I can speak for me only, I can tell you, that wasn't the case for me."

Mr Rolfe is a clever man. He is just not that special that he would be immune from being desensitised by the use of racist language or by a celebration of the use of force. It is a salutary lesson for this police force that can't be tolerated, and that police do a difficult job, often in traumatic circumstances.

They need to be supported, and I will come to that as my last topic and ways in which they could be supported better, that this behaviour and these attitudes can't be

tolerated, because they increase the risk of something happening that is tragic like what happened on 9 November 2019.

In my written submissions - sorry, in the written submissions on behalf of counsel assisting, we point out the examples of poor mentoring by at least two officers in the role of sergeant, Officer Bauwens and Officer Kirkby. That is addressed in detail.

It is a great shame, in particular in relation to Sergeant Bauwens, because as the head of the IRT, he performed an important role in terms of mentoring. And that is set out in detail and I won't trouble the court with it in my oral submissions.

I do want to turn briefly to the submissions made with respect to Sergeant Kirkby because I would suggest to your Honour that there is no way to sugarcoat the conduct of Sergeant Kirkby, who should have been performing a role of mentor.

On 3 September 2019. Sergeant Kirkby and Mr Rolfe engaged in the following text exchange set out at par 414 of our written submissions. Sergeant Kirkby said:

> "Sorry about the stress caused by losing my shit the other night. Stress you didn't need. You sorted it well. I just had enough. He was the second person to press my button that night."

Mr Rolfe replied:

> "Bro, there was literally no stress about it. I'm all for that shit. I've done the same to you more than once before. I'm always ready to make my camera face the other way and be a dramatic cunt for the film. Ha ha."

And Sergeant Kirkby replied:

> "And the Oscar goes to - ha ha."

We set out in written submissions, your Honour, that Sergeant Kirkby's evidence on this and most topics was deeply unsatisfactory. When asked a simple question about the meaning of those text messages, he answered on at least six occasions that he didn't know what they meant, which was frankly ridiculous.

He vacillated between having no or only limited memory of the context for the message, he gave a detailed description of the apprehension of an Aboriginal man during a foot chase at the trucking yards that he thought it referred to.

During his evidence, he then elaborated to refer to a dynamic police pursuit, apparently involving Sergeant Kirkby leaping over fences, and concluding with him grabbing or tackling the Aboriginal man and crashing into a shed was fanciful.

Sergeant Kirkby accepted that if he tackled the Aboriginal man and it was in a garden shed, that was a use of force. He said it was likely the Aboriginal man was detained. Then, when asked in evidence whether he would have submitted a use of

force, (inaudible) notification record by a CNE as required by the general orders, he first said he would have done.

When he was informed it didn't exist, he then said, "Oh no." When asked directly whether he failed to write up a Use of Force report because he wanted to cover up having lost his temper, he said, "No, I don't know. I don't know."

It's put on his behalf by counsel who have come in at a late stage, that counsel assisting have totally mischaracterised and unfairly summarised the model of behaviour that Sergeant Kirkby demonstrated to Mr Rolfe on the few occasions they directly worked together. I reject that.

It is put on his behalf that, for example, with respect to the relevant text message I just read, the more reasonable assessment of this text exchange is that Sergeant Kirkby was apologising for losing his shit at Constable Rolfe. That's ridiculous, with respect, your Honour.

I am not sure whether or not - I withdraw that. It is not helpful and it's not consistent with the evidence that's given by Constable Rolfe. Your Honour would find that both were not credible in relation to the incident that happened in relation to someone losing their shit. But it's impossible to find out now because it wasn't properly reported.

What it is, is an example of very poor mentoring and a disregard for the policies and procedures of the Northern Territory Police Force with the respect to the use of force.

I commend to your Honour the evidence that was given by a very well-respected former police officer, Superintendent – former Superintendent Scott Pollock, in relation to the importance of mentoring. And I'll cite his evidence elsewhere. But in relation to the importance of sergeants working with Mr Rolfe, he said this, set out at par 893 of counsel assisting's submissions:

> "The court heard evidence from former Detective Sergeant Scott Pollock, one of the most highly regarded and experienced officers in the Northern Territory at the time he retired. Superintendent Pollock expressed his disappointment that the racist text exchanges between Mr Rolfe and his supervisors had occurred and that the behaviour had not been identified. He agreed that Mr Rolfe's text messages and the fact that he possessed and shared videos relating to the use of force, were red flags, suggesting that they should have been identified and acted upon."

The exchange he had with senior counsel – I withdraw that – with council for the Parumpurru Committee, Mr O'Brien, is set out. Mr O'Brien puts to Superintendent Pollock his awareness of the video recordings that were sent to Mr Rolfe's family of Aboriginal persons and his laughing about the applications of the use of force.

It was suggested to Superintendent Pollock that they were clear warning signs that he was engaging in inappropriate behaviours and fit to be a police officer in the Northern Territory at that time. And Superintendent Pollock replied, “An absolute red flag.” And Superintendent Pollock expressed his disappointment that those red flags had not been identified earlier or acted upon when they were identified earlier.

In relation to the disciplinary process for Mr Rolfe. We’ve set out carefully in written submissions, your Honour, that there were failings in the disciplinary process moving just enough and effectively enough when red flags were identified. Red flags that Mr Rolfe was using force in an alarming number of circumstances, which were resulting in injury for Aboriginal persons and that he was turning off his body-worn video.

We’ve also set out the disappointing response in relation to the truly extraordinary findings of Judge Borchers that Mr Rolfe had perjured himself in proceedings in 2019. We haven't asked your Honour to make factual findings in relation to what happened with respect to the Ryder matter, but rather, the failings in relation to the disciplinary process that followed, and the significance of the attitudes expressed by a number of police officers in relation not those events.

Your Honour, I propose to speak for another half an hour in terms of using up my two hours’ time. I’m told I’m an hour down. I’m also told that there’s an issue with the livestream currently and that it might be appropriate to take a short break, morning tea break now, in order for it to be resolved.

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

ADJOURNED

THE CORONER: Yes.

DR DWYER: I'm told that the livestreaming is now working again. So I come to the findings that your counsel assisting team urge on your Honour in relation to 9 November 2019. It's respectfully submitted, your Honour, that Constable Rolfe and Kumanjayi Walker should never have been in the room together on that evening in those circumstances. They likely would not have been if Mr Rolfe had been disciplined and investigated properly and in a timely manner.

They likely would not have been in terms of Mr Rolfe would not have been eligible for deployment if he had been investigated or disciplined in a timely manner. Similarly, he shouldn't have been eligible for deployment if Mr Rolfe or CV had shared concerns in relation to Mr Rolfe's mental health decline, which were evident from the text messages close to the events of 9 November.

They should never have been in the room together that night in those circumstances, even if he was deployed, if Mr Rolfe and Constable Kirstenfeldt had not disregarded the arrest plan that had been formulated by much more senior and experienced officers. In effect, what we have submitted in our written submissions, and which I will take your Honour through briefly now, is that Mr Rolfe took over as de facto leader on 9 November and bears ultimate responsibility for what went wrong with Kumanjayi Walker. It was a failed operation in which he put himself, Officer Eberl and Kumanjayi at risk or increased the risk of what happened occurring.

Your Honour has heard much throughout the inquest in relation to the arrest plan. And just to remind the court briefly of some of the salient points of it. The arrest plan was set out, was to involve the IRT members, Eberl, Hawkings, Rolfe and Kirstenfeldt, the Dog Squad operator Donaldson, and local member, Felix Alefaio and Sergeant Julie Frost.

It mentioned only that member Hand was to remain separate to the operation, due to the conflict of interest. It clearly set out a plan for Saturday 11 pm, IRT commence duty and conduct high visibility patrols and respond to call outs. On Sunday morning 10 November 2019, the arrest of Kumanjayi was to commence. 5 am, Donaldson and Yuendumu Alefaio commenced duty along with IRT members to effect the arrest of Kumanjayi.

It referred to the earlier axe incident on 6 November, to put police on alert in relation to that. It stated that, "Of note, a funeral was taking place in the community this weekend." And it provided a local presence – sorry, it stated that there was to be a local presence of armed police to uphold law and order in the community and provide support to local members.

Specifically, of course, as I've already pointed out, it provided that a local member, Constable Alefaio would assist. And there was a significant benefit in that. It may be that after the event the court might consider that the 5 am arrest plan might

not have been foolproof, but it had very clear advantages over the haphazard and risky alternative that was ultimately determined by Constable Rolfe.

Most significantly, it would occur in the early hours of the morning when Mr – sorry, when Kumanjayi Walker was likely asleep. It would not have occurred immediately after Kumanjayi Walker had just been at sorry business, the funeral process. And most importantly, there was a local member who would recognise who Kumanjayi Walker was, so that there would be no need for the very risky situation that Mr Rolfe put himself in and put Constable Eberl in, of going right up to Kumanjayi in very close quarters and holding his phone close to his face, increasing the risk of exactly what occurred happening, in circumstances where he knew that there had been an aggressive confrontation on 6 November.

The findings that we submit with respect, your Honour should make in relation to this, are carefully set out in written submissions. Your Honour would find, with respect, that Officer Donaldson clearly knew of the 5 am arrest plan, and that's consistent with his evidence. This is set out from par 546, "At approximately 5:49 pm Sergeant Frost and Constable Donaldson entered the muster room at Yuendumu."

And there's a briefing – they remained there for 30 minutes, during which time Constable Donaldson was briefed on recent events and was briefed on the arrest plan. He was provided with a copy of that operations order. Sergeant – I'll withdraw that. Constable Donaldson read the OPS(?) order then and there, according to his evidence. He knew Sergeant Frost was his senior officer and that having been handed that document, it was his duty to read the document carefully. He was told and well understood from the OPS order that the plan was that the IRT would be there assisting with the unlawful entries of nurses' quarters, to start with, and that the attempted arrest of Kumanjayi was planned for the following day.

He understood that this plan had been designed in tandem with Sergeant Frost and Superintendent Nobbs and that the ultimate approval had come from Superintendent Nobbs. He can be seen to leave Yuendumu Police Station at 6:18. At approximately 6:33 pm Constable Kirstenfeldt and Mr Rolfe can be seen entering Yuendumu Police Station, crossing a corridor and entering the muster room. They spoke with Sergeant Frost in what your Honour would find was a very challenging conversation for her.

Your Honour would find that the evidence is compelling that those officers, and in particular, Constable Kirstenfeldt, were clearly uninterested in what Sergeant Frost had to say. Constable Kirstenfeldt, in particular, wasn't really prepared to listen to what Sergeant Frost was saying, and gave the impression that he was, quote, "Totally trying to take over the station at that point in time."

It's nevertheless clear, in my – in our respectful submission, that Sergeant Frost did inform Mr Rolfe and Constable Kirstenfeldt of the existence of the 5 am arrest plan. Your Honour would find that there is essentially consistency between the accounts of Sergeant Frost, Constable Alefaio and Mr Rolfe on this issue, that is that they were told about the 5 am arrest plan.

And this is set out in detail and a number of points are made. But I just note this. Mr Rolfe's evidence, even at trial and inquest, assumed his knowledge of that plan. He gave evidence that it was he who raised with Sergeant Frost his concern that the 5 am arrest plan required more (inaudible).

And hence, he suggested that the IRT would consistent with their approach, and I quote:

> "Introduce ourselves to the community while attempting to gather intelligence about a person that we are generally trying to locate, and at the same time, trying to gain community assistance for our task."

But, at no stage, did Sergeant Frost advise him that the 5 am arrest plan had changed.

For the reasons set out in our written submissions, your Honour would find that Senior Constable Hawkings and Coinable Eberl, regrettably, were not adequately briefed and were not briefed on the 5 am arrest plan. Upon his return at approximately 7 pm, Constable Donaldson found each of the four members of the IRT in the muster room gathered around a desk. And his evidence is clear, that.

> "Zach Rolfe was giving a brief on where we were going to. Mr Rolfe was taking charge in terms of directing Constable Eberl and the other officers from the IRT about what would happen next."

That is the evidence of Constable Donaldson and Constable Eberl.

As to the context of that briefing or discussion, your Honour would find that in substance, Mr Rolfe was briefing the members on the immediate attempt to arrest Kumanjayi Walker, by attending, entering and searching Houses 577 and 511. That is he was acting in disregard of the arrest plan, and he was briefing them on something different, an immediate arrest.

That's consistent with Mr Rolfe's status as de facto team leader, self-appointed. And the interests that he had shown during the preceding three days in securing Kumanjayi's arrest. Constable Hawkings, who your Honour would accept, along with Officer Eberl as a credible witness, told investigators just four days after the shooting that the tenor of Mr Rolfe's briefing was, and I quote, "Let's get in there and let's pretty much get out there and locate him."

The briefing conveyed that the idea was to go back to the station, hopefully identify him, locate him quickly and then return back to the station and come back to Alice Springs. The substance of the briefing given by Mr Rolfe was that the best intel was that Kumanjayi was at House 577 or House 511 and the IRT would go to those locations where Mr Rolfe and Constable Kirstenfeldt would affect a standard entry to the address with Senior Constable Hawkings and Eberl taking the back in the event that he runs.

Officer Hawkings said in response to questions asked by Mr Edwardson, put simply, the plan was to locate Kumanjayi Walker who would be immediately arrested. Constable Eberl gave, in effect, the same account. When asked whether he left the Yuendumu Police Station at 7:06 pm with a plan to arrest Kumanjayi, he answered, “Definitely. Yep.”

Similarly, Constable Donaldson understood the plan as outlined by Mr Rolfe to be inconsistent with the plan that he had been briefed on earlier that day by Sergeant Frost. So different was this briefing to the plan outlined by Sergeant Frost that Constable Donaldson assumed that there must have been a conversation between Sergeant Frost and the IRT that he hadn’t been privy to, during which the plan had changed.

But Constable Hawkings’ evidence is consistent with Sergeant Frost that she wasn’t part of the subsequent briefing. There is a very unfortunate miscommunication between some members of the IRT and Sergeant Frost. But in my respectful – in our respectful submission, there was a deliberate failure to follow the arrest plan by Officer Rolfe and he led, that is he and Constable Kirstenfeldt, led the officers astray, but Mr Rolfe, in particular, assumed responsibility when he appoints himself as de facto leader.

It’s submitted on behalf of Mr Rolfe that Constable Alefaio was told to stay behind. That’s at par 139 of their submissions. That misstates the evidence, including the evidence of Constable Alefaio, who explained to the court that he understood that he was required to meet them at the station at 5:30 to assist with the arrest.

It’s put on behalf of Mr Rolfe at par 156 of the submissions, “In any event” – that is, as if putting aside the arrest plan - “that’s not what any respectable police officer would do if told the arrest plan was for 5 am.” I've already put to your Honour what the advantages of the 5 am arrest plan were over this haphazard plan that Mr Rolfe appears to have devised. And it came from senior experienced officers who should not have been disregarded.

What happened next was not intelligence gathering, as suggested by Mr Rolfe. Your Honour is urged by those who appear for him to put aside the semantics of what amounts to intelligence gathering. Mr Rolfe says in par 153, page 39, “Digressing to semantics on the true scope and definition of what intelligence gathering is, is a futile exercise.” This is not semantics, your Honour.

What happened after Mr Rolfe and the IRT members left Yuendumu Police Station after 7 o'clock, is fundamentally different to what was intended. As Superintendent Nobbs explained in a compelling way, “There was no point intel gathering at 7 pm about where Mr Rolfe (sic) might be likely to be at 5 am by going to the place that he usually slept.”

Your Honour, it's suggested by those who appear for Mr Rolfe that the Coroner can't rely on the evidence of Officer Meacham King, that this was not intel gathering. There's a complaint in the submissions on behalf of Mr Rolfe, that your Honour refused to allow the recalling of Officer King after the racist certificates, so-called certificates, (inaudible) certificates, appeared.

Firstly, your Honour, the request for Officer King to be recalled, would have added further time and resources to an inquest which has already run over time. Another complaint made on behalf of Mr Rolfe. It was entirely reasonable to deal with any issue in relation to Meacham King by written submissions and oral submissions. And further, the evidence about racist certificates is unrelated to intelligence gathering.

But if your Honour does not wish to rely on the evidence of Meacham King, that this was not intelligence gathering, your Honour need not do so. The evidence that this was not intel gathering comes from other highly credible sources. And I note in particular, the evidence of Superintendent Nobbs, transcript page 1116; the evidence of former Commander Proctor in the brief, document 1-1 at page 69; and the evidence of former Superintendent Pollock, 1-2 at page 19.

Superintendent Nobbs said in his evidence this, "I spent probably six months not sleeping, going how can something so simple in my mind, have become what it ultimately became." It's an example of how reflective he was, and no doubt, many other officers who had had some involvement in the development of this plan or the events of 9 November and the angst it has caused the Northern Territory Police Force, when this went so terribly wrong.

But the answer to the question of, "How something so simple in my mind could have gone so wrong", is because – and the arrest plan that had been agreed to and formulated by Sergeant Frost, was not followed. And Superintendent Nobbs was not consulted about the change in that plan.

I have made the point already that ego had a lot to do with the tragic end result. Mr Rolfe and Mr Kirstenfeldt when they were at the station thought they were better than the plan that had been devised by the community police officer. Mr Rolfe, in particular, demonstrated contempt when he then became a team leader, effectively, and disregarded the arrest plan and conducted his own briefing on something different.

Mr Rolfe and Constable Kirstenfeldt claimed that they did not read the arrest plan. For the reasons set out carefully in our written submissions, your Honour would reject the suggestion that the arrest plan was not provided to those officers. Your Honour would find, as set out at par 557, they were briefed orally on the 5 am arrest plan. It's most likely that briefing occurred between 6:33 and 6:56 pm. That is prior to the arrival of Senior Constable Hawkings and Constable Eberl.

Mr Rolfe and Constable Kirstenfeldt well understood that Sergeant Frost's expectation was that they provide high visibility policing in two shifts before

reconvening at Yuendumu Police Station at 5 am for the planned arrest. They well understood that Constable Alefaio was to meet them at that time and at that location for that purpose.

That finding is compelled by the evidence of Sergeant Frost, the evidence of Constable Alefaio who heard Sergeant Frost brief the members on the 5 am arrest plan and Mr Rolfe's own evidence at trial and inquest which tacitly accept that he was aware of the 5 am arrest plan.

Your Honour would find that Mr Rolfe at least - if not Mr Kirstenfeldt - Mr Rolfe - was provided with a copy of the written ops order which outline the plan - and that he knew of its contents. That finding is compelled by the evidence of Sergeant Frost. The fact that Mr Rolfe took photographs of the ops order and therefore must have been aware of it, and the improbability that Mr Rolfe, who was otherwise focussed on gathering intel would have overlooked the very page he was photographing in terms of the fact that he had outlined the more detailed plan for Kumanjayi's arrest.

It follows then, your Honour, that Mr Rolfe lied at trial and the inquest when he gave evidence that he was not aware of the fact or content of the ops order - and he told that lie because he knew that the truth - which was that he had received the document - tended to prove that he was aware of the 5:30 am arrest plan and he actively knew he had deviated from that plan when he sought to arrest Kumanjayi Walker shortly after 7 pm on 9 November 2019.

We have made the point in written submissions that officers Eberl and Hawkings were most likely not briefed on that plan, they were following Rolfe's lead and they acted in good faith in doing so.

In my respectful submission Constable Eberl and Hawkings would have impressed your Honour as good officers who genuinely thought they were following the approved instructions and they were led astray by officers Rolfe and Kirstenfeldt. Eberl in particular was put at risk because of the arrest plan.

We deal in some detail with whether there was permission to ender the house. That is a complicated and somewhat technical area of law dealt with fully in written submissions.

I propose to deal briefly then with what happened inside the house.

Your Honour should make, with respect, the following findings regarding Mr Rolfe's conduct once inside house 511. This is set out at par 562.

> "In keeping with his tendency to rush into situations without regard for his or others' safety and his tendency to want to get his man at all costs, Mr Rolfe immediately closed the gap between him and Kumanjayi Walker, created a situation in which the very risk that had arisen during the 6 November 2019 attempted arrest were repeated.

> Second, Mr Rolfe's account of Kumanjayi Walker reaching for his gun was an invention. It was added to his account for the first time when giving evidence at trial two and-a-half years after the events."

That is a significant finding, your Honour and I make it carefully and after careful consideration and we have set out the evidence in full, your Honour would find the following: if that were true that Kumanjayi had, in fact, attempted to obtain Mr Rolfe's firearm that would have been understood by Mr Rolfe to be one of the most significant pieces of evidence in respect to his claim of self-defence. He conceded at this inquest that the significance of Kumanjayi putting his hand on his Glock is that he could have then withdrawn the weapon potentially and shot him - and to lose control of his service weapon was one of the most serious things that could happen to a police officer - and yet, Mr Rolfe did not tell Breanna Bonney of it - a fellow officer - when describing the incident to her in the morning after the shooting, between 2 am and 3 am on 10 November.

He didn't write the detail down in his otherwise detailed police notebook entry describing the shooting. He gave a lengthy and detailed interview on 5 December 2019 to Kirsten Shorten of the Australian, who Mr Rolfe knew was sympathetic to him, in part because she had informed him that she was happy to - quote - "write an article" in his defence.

During the interview Mr Rolfe describe the shooting of Mr Walker in great detail, indeed, he did so on camera in more than one take and in not one of those takes did Mr Rolfe mention that Kumanjayi walker had put his hand on his Glock - in not one of those takes - on 5 December 2019 - less than a month after Kumanjayi's death.

As a result of this lie, the lies Mr Rolfe told regarding the broader events of 9 November 2019 and the significant issues with respect to his credibility as a historian of his own use of force mean that your Honour couldn't accept - even on balance - that Mr Rolfe's evidence that he feared for his or Constable Eberl's life when he fatally shot Kumanjayi Walker, can be accepted.

There is evidence that supports Mr Rolfe's claim that he genuinely feared for Constable Eberl's life but there is, however, also a substantial body of evidence that supports a more sinister hypothesis, namely that as a result of his fascination with violence, the extent to which he had dehumanised Aboriginal people and his desire to - I quote - "shoot someone to go on a paid holiday" as he said to Ms Campagnaro, means that he set out to create a situation in which he could justify using legal force against Kumanjayi or at least when presented with the opportunity, that is what he chose to do, consistent with what - his values.

The text messages exchanged by Mr Rolfe on the days immediately following Kumanjayi's death demonstrated that he believed he would be lionised as a result of this death. He was shocked when his conduct was subject to criticism and ultimately the subject of a criminal charge.

It is a matter for your Honour whether you accept those submissions of counsel assisting of course, it's objectively listening to the evidence of all of those who have appeared with an interest in this inquest, but those submissions are not resiled from.

I note the submissions of the Parumapurrua committee at par 60 to 69, that it is extraordinary that the evidence in relation to Kumanjayi Walker allegedly going for Mr Rolfe's Glock were not put to Sergeant Barram at trial. They were not put to the witnesses at trial at any time prior to - or at committal and that story emerged for the first time when former Constable Rolfe was giving evidence at trial.

Your Honour will find that inside the red house what happened was a classic example of officer-induced jeopardy, and that is clear from the evidence of former Superintendents Proctor and Pollock, Sergeant Barram and Mr Alpert.

On behalf of Mr Rolfe, his legal team complains at par 11 of their submissions - and I quote - "That not a single party in near 100 pages of submissions has analysed the evidence of the only credible use of force expert in this case. Former Federal Police Commissioner Benjamin McDevitt, the architect of the Use of Force Policy and principals that underpin the Northern Territory Police Force training (inaudible) which applied to Rolfe on 9 November.

I reject the suggestion that he was the only credible use of force expert in this case but your Honour will, no doubt, take careful note of the evidence that he gave.

In relation to the concept of officer-induced jeopardy or similar concepts, he considered that while he said that Mr Rolfe had acted in accordance with his training "once inside House 511", he also considered it was necessary to take a broader view and not just focus on the events that occurred inside house 511, and that is transcript page 4569.

He was critical of the officers inside House 511 closing the gap between themselves and Kumanjayi too quickly. He said - and I quote:

> "I think the problem for them - and I've seen it on multiple occasions - that they seem to have put the priority of identification of who it was that they were talking to up front, and that led them, I think, to close the gap with Mr Walker which, you know, I think they shouldn't have done. They could have established his identity from a safer distance if you like."

And I pause to note of course that they wouldn't have had to do that if Constable Alefaio had been with them in accordance with the 5 am arrest plan formulated.

It is then put to him by Mr Coleridge - and indeed, I think that's exactly what you said at trial - page 1262, that: "This singular focus on getting in there and establishing identity and closing the gap means, in your opinion that there wasn't enough focus on their own safety, for example?" And he said, "Yes, that's correct."

There are more general points from Mr McDevitt. I understand your Honour will have read his evidence carefully and also the submissions made on behalf of Mr Rolfe in respect to his evidence.

Mr McDevitt commenced his oral evidence at inquest by saying:

> "Obviously, I am Kartiya, not Yapa, and I do not have any in depth knowledge or understanding of Warlpiri history, language or customs. I think that like many Australians, many Kartiya, I am poorer for not having this knowledge or understanding."

He stressed the importance of understanding things like bias and racism when assessing use of force and training officers in the use of force. He said that when teaching officers to use force safely and when assessing their use of force in hindsight, bias and cultural awareness training was vital.

He said that it was vital that police officers ask, “What bias and cultural baggage are we carrying?” He said that even subtle biases could still influences police decision-making about the use of force in ways that needed to be avoided or confronted.

He said that a racial bias might cause the officer to assess a person of a particular race as being at greater risk to the officer. And he agreed that, in large part, his report recommended to ensure the use of force by an officer, racial biases need to be identified and confronted by police officers.

I remind your Honour of the evidence of psychologist, Mr Van Haeften, in an exchange with Mr Officer, when he said that, “Decisions officers make as well as their training will be influenced by their attitudes and values.” What a great reminder of the importance of re-enforcing good attitudes and good values for the police force of the Northern Territory.

The officers who created the arrest plan have reflected on it and have given evidence carefully in this inquest. And there are detailed submissions in our written submissions in relation to the evidence of the communication about the arrest plan up the chain.

All of those persons, including of course, Superintendent Nobbs, Sergeant Frost and the Assistant Commissioner Wurst and the other officers who were engaged in the arrest plan and communicating it acted in good faith, and they consider that they were following the chain of command. They were running decisions up and down the line, as expected.

Each of them checked the arrest plan. None of them went off on a frolic of their own. That is what you would expect reasonable police to do. They did not anticipate a change in that plan.

We'll deal with the remaining issues very quickly. The actions after Kumanjayi was shot were very distressing and they occurred in a volatile and emotional situation. I agree, with respect, with the submissions made on behalf of Constable Rolfe that your Honour should not be critical of the failure to treat Kumanjayi at the scene.

You should not be critical of the failure to secure the scene as a crime scene immediately. It is an almost impossible position for us to put ourselves in, what those officers were then facing in terms of the scene after Kumanjayi was shot.

But having a crowd of distressed people may well have hindered the treatment in terms of the CPR that was required urgently, and the management of the scene. I also agree, with respect, with the submissions made on behalf of Constable Rolfe that there is no basis to criticise the CPR efforts in spite of the absence of mouth-to-mouth CPR.

In my respectful submission, Officers Rolfe and all the officers there did their best to administer CPR after Kumanjayi was shot in circumstances where compounding this tragedy, the clinic was closed and made it very difficult to administer proper care. Kumanjayi passed away relatively quickly because of the injury to his major organs. In my opening submissions, I said this:

> "Constable Rolfe and Senior Constable Kirstenfeldt headed the resuscitation efforts, given their significant training in military aid experience. I expect your Honour to hear that they did everything they could to try and sustain Kumanjayi's life, including packing the wound to stop bleeding and making him as comfortable as they could."

And in fact, that's the evidence that was borne out. The submissions on behalf of Mr Rolfe complained that nobody sought to play the revival efforts. There was no difficulty with anybody playing the revival efforts, but of course, it wasn't necessary to play them in open court. They're distressing. Your Honour has seen those revival efforts and wouldn't be critical of them.

I endorse the submission made on behalf of Mr Rolfe that there was professionalism and care shown in respect of those CPR efforts. That's understandably maybe of little comfort to the family, given the circumstances as to why Kumanjayi was there in the first place.

I do note, your Honour, the particular empathy shown by Officer Eberl to Constable Rolfe which - sorry, I withdraw that - I note the particular empathic response by Officer Eberl, which is clear from the video, and I commend to your Honour the efforts to engage in CPR.

Back at the station, there was a rouse by police for some time to suggest that Kumanjayi was still alive. That is deeply regrettable; deeply hurtful. But in the submissions of your Honour's counsel assisting, it was a very, very difficult situation and the rouse is not an example of racism, in my respectful submission.

I appreciate your Honour will hear submissions to the contrary by the family, the Parumpurru Committee and NAAJA, but we do not adopt those submissions; accept that the community as a whole were behaving in a restrained manner, but there were example of some people who were not.

We have to be realistic about what happened and what the police were facing on that night after Kumanjayi was shot. There were rocks that were hurled onto the roof and there was a nurse who was significantly hurt, and we can't sugarcoat that. It just needs to be looked at realistically.

Even a few people acting in a way that is dangerous can cause serious danger. It's fair enough that police were aware of how volatile this situation was in circumstances where they were a long way away from any backup. It's acknowledged, your Honour, that as a result of that rouse, there is a lot of repair to be done with this community.

It is acknowledged that the community have suffered in terms of a lack of trust of police after this event and it demonstrates the need for serious reconciliation and better communication between police and community members so those fears can be alleviated.

I commend to your Honour in particular the efforts made by Sergeant Frost to try and heal some of the significant wounds after Kumanjayi's passing, but there are other officers, of course too, senior officers and junior officers, who have made significant efforts in Yuendumu and those efforts must be doubled down on and supported.

There is a significant role for Elders and leaders in the community in building relationships. I acknowledge, on behalf of the counsel assisting team, the extraordinary leadership of the Elders and young leaders on that night, including, of course, Derek Williams, Ned Hargraves, Samara and others.

Mr Rolfe, as I have already said, expected to be lionised as a result of those tragic events. But experienced, mature, thoughtful officers like Sergeant Frost, Officer Hand, Superintendent Nobbs and beyond knew the true extent of that tragedy and the trauma to follow.

In the days that followed Kumanjayi's death, the text messages exchanged between Mr Rolfe and some of his friends show an immaturity and a lack of sensitivity, "Stoked for you, bro", wrote one person, "Let's see them keep you out of the TRG now." That might just be bravado in difficult circumstances, but it certainly shows a lack of empathy for Kumanjayi's family.

Compare Superintendent Nobbs who, in a demonstration of his maturity and sensitivity, told the court he lost six months of sleep and beyond trying to work out how this went so wrong. And your Honour will reflect on the emotions exhibited by a

number of officers, including Officers Hand and Smith and Sergeant Jolly and Sergeant Frost, about how devastated they were in relation to Kumanjayi's passing.

We have dealt in our written submissions with the gathering that happened at Mr Rolfe's house after Kumanjayi passed, which was inappropriate and allowed for the exchange of information that might have been relevant in relation to building a defence for Mr Rolfe at trial.

However, it's also clear that there were inappropriate supports, or insufficient supports for some of the officers involved, and police and people will potentially make poor decisions about how to support each other when there is a vacuum of inadequate supports from senior officers, and institutions.

There needs to be clear policies and procedures in place for police exposed to traumatic events so that they are not left alone, and I commend to your Honour some submissions made by the Northern Territory Police Association in that regard.

So the final topic, your Honour, relates to supports to police. To avoid a further tragedy, we need to acknowledge the very difficult job that Northern Territory Police Force do, reflecting again on the levels of trauma that your Honour has recently spoken about in other inquests and acknowledged in this inquest.

I'll quote, your Honour, from the Northern Territory Police Association. Just give me one moment sorry, your Honour.

The association's submissions refer to the evidence of officers about the important of community policing and engaging with the community. They also note, however, that in the leadup to Kumanjayi's passing the officers at Yuendumu were impacted by extreme levels of fatigue.

And that must be addressed if we're serious about officers being able to spend time engaging positively with the community. They quote:

> "Discussing the work of police in relation to coordinating members and meetings about family violence prevention programs and others."

And they note that:

> "Superintendent Nobbs stated that he encouraged officers working under his command" –

this is at par 15 of their primary submissions –

> "to bring the conversation to the people rather than scheduling meetings which no one attended and simply saying now it's five past three. So no one's here so let's wrap up and go home."

He acknowledged the importance of community interaction and engagement and building relationships with local people saying he would often say to his place, “I don’t care if you come to work tomorrow in your PT gear and you kick the footy all day. If the opportunity presents go do it.”

As the NTPA says, that sentiment expressed is valid and the NTPA say the importance of police members being engaged in the community in which they live and work cannot be understated both for the benefit of the community and the welfare of the members.

It’s so important, your Honour, that officers have the opportunity for all the positive cultural engagement that community live in can offer and positive cultural engagement that living in the Northern Territory can offer.

The NTPA go on to point out that the reality of policing in Yuendumu up to and including 2019 was that the station was at times under-resourced, gazetted and relief members were working excessive overtime hours. They were offered little respite and even on designated days they were to reasonably available to be called back to duty.

So the welfare of police does need to be prioritised in order that they can engage in positive community activity and to engage in all the training in relation to use of force and combatting racism that is required.

In relation to the issue of racism more broadly we have set out some of the concerns in our written submissions. One suggested recommendation is that the Northern Territory Police Force should set up a working group with representatives from the main agencies affected; police NAAJA, NT Legal Aid and the Ombudsman to discuss good communication and procedures for addressing complaints made by Aboriginal people about police use of force and allegations of racism.

I understand that that is a recommendation that may be supported by Northern Territory Police. I acknowledge that there are some encouraging signs that Northern Territory Police have taken these issues seriously.

Mr Murphy acknowledged that they do have an issue in relation to combatting racism in the Northern Territory Police Force. I acknowledge the appointment of Leanne Liddle for the executive. Her title’s Executive Director of Community Resilience and Engagement Command.

I anticipate your Honour will hear about some significant reforms already introduced. I acknowledge the other encouraging signs including an apology from Commissioner Murphy earlier this year for the racism that was acknowledged to have been revealed as a result of this inquest.

The NTPA refer to a welfare strategy, various supports and a fatigue management policy and I commend those submissions. Your Honour, again I propose to put out draft recommendations that adapt and adopt some of those.

I commend to your Honour that there must be leadership from the top of the Northern Territory Police and there must be leadership from the Northern Territory Aboriginal communities which is properly engaged in.

For example, boosting night patrols and considering further ways to work with community. Those are my submissions for the moment. Your Honour, I propose just to use the remaining 15 minutes at the end of the proceedings.

THE CORONER: Thank you, Dr Dwyer.

Yes, Mr Mullins.

MR MULLINS: Your Honour, on 5 September 2022, the first day of this hearing in Alice Springs, there were several tents erected on the court lawns across the road from this courthouse. In front of those tents and directly opposite the entrance to the courthouse there was a sign.

And the sign included three words, “Tell the truth.” The Brown family are the members of the Yuendumu family and their supporters have been present on the court lawns each day that evidence has been given before your Honour.

And the message to tell the truth has never changed. From the Brown family’s perspective the court lawns have been an important component of this inquest. The lawns have provided an opportunity for family members and supporters of the family to connect in their own space.

They allow people to express solidarity in a place that is different from a courthouse but close enough to be connected. It allows family and supporters to meet and share for open discussion, for questions to be asked and answered, for each voice to be heard and for opinions to be expressed.

It offers the opportunity for elders to give guidance and for young people to speak their mind. The court lawns have, and will continue, to provide a waiting place when many Aboriginal people will gather.

The message to tell the truth that was being delivered to the lawyers, witnesses, the media and other participants who attended the inquest had been sent long before the inquest commenced.

The Brown family called for the truth to be told in the days immediately following the shooting. At the time of the committal proceedings the Brown family members in the community gathered on the court lawns to show support for each other and to call for the truth.

They again gathered on the court lawns during the course of the criminal trial in Darwin to support their family who had travelled to Darwin to be present for the trial.

Your Honour has heard extensive and uncontested evidence about the devastation of the Walpiri people over the last century that Dr Hinkson observes.

Prior to the establishment of Yuendumu as a ration depot in 1946 the Walpiri lived as hunter/gathers harvesting food across their lands and living through customary law. Pastoralists move onto their land and suffocated their traditional hunting and food sources.

They were shattered by the Coniston massacre in 1928 and the memory and legacy of that time remains with them today. They witnessed a flawed and prejudice federal government investigation into those crimes.

They suffered the devastation of the 1940s and 1950s becoming subjected to the protection and preservation neuro policies. They became wards of the state unable to vote, restricted in their movements and their use of Walpiri custom and language.

Many of their children were stolen from their families in the 1920s and thereafter. It is impossible for outsiders to truly comprehend the theft of a child from their parents and the grief both the child and the parent would feel on that separation.

But this policy was forced upon them and they have lived with it for decades. They continue to live every day with the consequences of that policy. In the early 1970s until the mid-1990s a policy of self-determination and self-management inspired community activity and development.

By the 1990s and Dr Hickson herself observed in Yuendumu an imperfect but vibrant scene of intercultural activity. There were may community controlled incorporated organisations and councils covering the arts, media, gender specific services, night patrol, mining, cattle management and a social club.

Customary approaches to community-based dispute resolution was still being enacted including sentencing in public forums. The Yuendumu Government Council was established. A policy upheaval in the late 1990s led to a policy of mainstream or normalisation. And Dr Hingston observed then a profound and systemic reduction in the authority of the Warlpiri Elders and intervention in the early 2000s effectively disempowered Aboriginal people in remote communities.

It introduced a vast new system of surveillance into their lives which has had a devastating effect. The evidence before your Honour also reveals the problematic interaction between the Kartiya criminal law and indigenous people. The huge number of Aboriginals and Warlpiri people who are incarcerated in the Northern Territory for offences across a broad spectrum, reflects the disastrous relationship the Warlpiri people have with the criminal justice system.

As has been observed during the course of this inquest, it was a justice system that the Warlpiri people had never wanted and that had been imposed upon them. For them, the application of that system is an ongoing catastrophe. The Brown

family perceive that the prejudice and disadvantage they suffer every day in ordinary life, is reflected in their experience of the criminal justice system.

The Brown family see that Kumanjayi Walker was a byproduct of this history, His life as an infant was punctured with illness and attendance at hospital. When Ms Oldfield gradually took over parental responsibility for him, she felt that she had a strong connection with him. As an infant, he suffered from serious health problems, including pneumonia, conjunctivitis and meningitis. The symptoms from these illnesses continued to plague him during his youth, in addition to the suspected FASD diagnosis.

Kumanjayi travelled with Ms Oldfield to Adelaide where he spent time with his cousins, including Samara Fernandez-Brown. She described him as having a calm presence and a quiet composure. He was quirky and fun. He enjoyed spending time with his family and maybe these were the happiest years of his short life. She observed he was a much-loved member of the family.

The evidence from police records reveals that as the years went past though, he became increasingly disconnected from his family and found himself on the wrong side of the law. And he experienced significant periods of incarceration and his imprisonment, he found, was distressing and confronting.

The person who probably knew his overarching situation best was Kerry Chilvers. She said that when he was engaged in a program and participating in culturally based activities, his behaviour was rarely problematic. As a young man, when she managed him as a case coordinator, she observed he had a keen desire to learn and was generally well behaved.

She recognised however, that he suffered from symptoms of hyperarousal, consistent with indicators of an over aroused sympathetic nervous system. The factors that she observed she thought were indictors of post traumatic stress disorder. And in short, Kumanjayi was ill and likely suffering from the consequences of significant mental health issues.

In the criminal trial, Kumanjayi was described as a violent and dangerous offender. The Brown family were shocked to hear of him described that way. Their experience of him was quite different. And that experience was reflected in evidence from members of the Yuendumu Community. Your Honour heard from multiple witnesses from the community who expressed their love for him. Alice Walker-Nelson(?) expressed that all of her family loved him, made jokes with him whenever he visited. And he shared with them what was going on in his life.

Lottie Robertson described him as a happy and quiet young fellow. He had his moment, but he was, in her words, “A really good young fella.” Kumanjayi was part of the Brown family and part of the Yuendumu Community. He was in Yuendumu in November 2019 to participate in sorry business and to attend the funeral of his grandfather.

One of the tragic aspects of this event was that Kumanjayi was not only killed in the community, but he was killed in the home of his grandmother, Margaret Brown. As your Honour has observed, Yuendumu was a (inaudible) and closed knit community. From time to time, tensions flared and there are disputes between families. But for the most part, the majority of the community live in harmony.

The extended Brown family live in several houses across the community, and those homes form an important component of their daily existence. In the community and in their homes, children are raised and families developed. Family who have left the community return home to sleep and eat there and visit their relatives. The community and their homes are the hub of Brown family life.

So when the IRT drove into Yuendumu on 9 November 2019 and made their way around the community, first to House 577 and then to the red house, brandishing their Glocks and long arm rifles, they failed to accord any respect to the people who lived in those homes, the families and the children. The screams that could be heard on the body-worn video after the shooting were the expressions of fear, not aggression. These were the screams of women and children who had been witnesses to three shots fired after armed police officers brandishing rifles had entered their community.

They were no doubt terrified. Who had been shot. Who else was going to be shot. That they then observed one of their community members being dragged across the ground in front of them, can only have been extremely confronting and distressing. The notion that an armed police officer with his hand on his gun might enter a house without permission, just to check whether a person is inside, after being told that that person wasn't inside, would be abhorrent to most Australians. That a police officer would enter a family home and shoot and kill a family member, is shocking.

Very few people would be able to remain in a home where a family member was shot and killed. For Margaret Brown, the trauma of the event occurring in her home, has been overwhelming. The notion of the red house being a home has changed forever. She has created a shrine to Kumanjayi, and the red house is now a testament to his memory. And that memory is pervasively sad. She lives with that every day.

After the shooting, family members congregated at the police station, not to fight with police officers, but to find out about Kumanjayi. People were calm, people were angry but were retrained. The Elders were encouraging the young people to be quiet. The court heard from Samara about the impact those events outside the station had and there was an overall heightened anxiety about Kumanjayi's fate.

But also fear about what the police might do in response to the crowd outside. She felt there was a need to record their actions, fearing the police would later say they were dangerous. And over time, as the vigil progressed, she felt disregarded and disrespected, as the police would not communicate with the family.

The next morning, after Samara had gone to bed, watching the plane depart, hoping that Kumanjayi had been saved, she was awoken by wailing. The community then went into mourning. Everyone was fearful and emotionally distressed. And to find out that Kumanjayi had not been flown out, that the ambulance to the airport was all a charade and that Kumanjayi had died at the police station, shattered her faith and the Brown's family faith in police and authority.

We, of course, submit that the ruse was unnecessary. Communication with Derek Williams and the Elders was the preferred course. In the days that followed, Samara asked an officer in riot gear about what was happening. He was blaze and defending the need for riot police and blaming the community for their presence. And whilst the family were undertaking sorry business on that very next day, she saw long armed rifles being held near the red house. And she felt this was a show of power, both insensitive and disrespectful.

During the course of the inquest there have been many witnesses who have expressed their sorrow and regret for the events that have occurred. The Brown family are hopeful that there will be an apology for the people of Yuendumu from the Commissioner, following his recent statement at the Garma Festival. But the expressions of regret also reveal the depth and extent of the wrongdoing.

For example, Sergeant Hand stated that it was very upsetting to him that the family of Kumanjayi did not know that he had died in the police station. He said he could understand how hurt and upset the family was, in particular, Derek Williams, in knowing that he was related to Kumanjayi.

Sergeant Julie Frost expressed her sorrow for the loss of Kumanjayi and a hope that the inquest could provide the family with some answers as to what happened. More importantly, she hoped that we could all learn lessons from this incident to ensure that this never happens again. She expressed the view that it was a tragedy that Kumanjayi died, and she felt very sorry for the loss to the family.

Former Deputy Commissioner Murray Smalpage has apologised on behalf of the Northern Territory Police Force for the circumstances of passing of Kumanjayi; for the deception of the community in sending the ambulance to the airstrip; for the manner in which Kumanjayi's family members were told of his passing on the morning of 10 November 2019; for referring to Kumanjayi after his passing by using not only his first name, but an incorrect name; for the dragging of Kumanjayi to the police vehicle; and for the carrying of long arms in community after his death.

He has also apologised for the racists and offensive text messages sent by various members of the force; for the TRG awards; for the book of truths; and the racist language and behaviour of various members. The Brown family acknowledge and receive these apologies. But they are acutely aware that an apology does not change their day-to-day existence.

An apology, whilst received and acknowledged, has little weight if the conduct that was the subject of the apology continues unabated. Although members of the

Brown family and the broader community were not in court each day, their presence on the court lawns demonstrates their commitment to the process. Supported by Yasmine Musharbash, Jay Davies(?) and their team from the Australian National University, the Brown family followed the evidence of each witness very carefully.

There were many people who attended the court lawns, from the Walker, Lane and Robertson families, as well as the Brown families. From the Brown family, Jean and Margaret Brown were regular attendees, with their niece Joyce Brown. Magarey (inaudible) and her family from Katherine attended. Kumanjayi Brown was regularly present. Stephen Marshall and his family travelled from Yuendumu.

Part of the task of the Brown family legal team was to inform the community on the court lawns about the events that had unfolded at the inquest on a particular day. And during the course of the lunch adjournment and after court, our team would gather the people on the court lawns and explain to them the evidence that had been given and the particular issues that the court was addressing at that time.

These sessions were well attended, reflecting the importance of the Brown family and their supporters and the Walpiri people placed on the evidence before the inquest. Despite their desire to know and hear the truth, the truth was not always easy to convey or for the family to digest. On many occasions I recounted evidence that was very distressing to the Brown family and community members.

For Leanne Oldfield, the evidence was so distressing, even in a watered-down form, that she was often unable to attend at the court lawns at all. I remember well the meeting on the court lawns at the end of May this year when I conveyed to the community the evidence relating to the awards that were handed out by the TRG mocking Aboriginal people.

I recall one family member who sat in front of me as I detailed the evidence, she looked across my shoulder towards the courthouse with a look of disgust and despair. This was the organisation that had descended on Yuendumu following the shooting to quell the non-existent unrest that was supposedly about to grip the community.

The discovery that they had for many years been mocking Aboriginal people with annual awards to their members, confirmed the family's belief that Aboriginal people were perceived and treated by some members of the Northern Territory Police Force as a lower class of people unworthy of respect.

Irrespective of how difficult the truth was to confront, the Brown family and the Walpiri people attended the court lawns each day as the inquest proceeded. And throughout the inquest and their quest for the truth over the past five year, there have been significant losses in the Walpiri Community that have devastated Yuendumu.

Some Elders who attended the court lawns on a daily basis passed away without seeing the justice they'd hoped for and believed in. And I want to pay respect to

Elders, Mr Kumanjayi Nelson, Mr Kumanjayi Brown, Mrs Kumanjayi Marsell(?) and Mrs Kumanjayi Eagan(?).

These people were pillars of the community and were frequent on the court lawns providing knowledge, strength, guidance and hope. They hoped for a better future for themselves and their families and waited patiently for the truth to be told. To the grief of their surviving family and community members, they passed before they could see that day.

But despite all of this, the Brown family and the Walpiri people are strong, as Ned Hargraves told the inquest, that people have suffered, and they know they have suffered. In his words, "They know they have suffered, because most of them have learned and seen what they have gone through. And today they still have the memories of the trauma of their history. But they are Walmala, a nation of Walpiri warriors. They are strong in their laws. They are strong in their culture. And even today, they are still continuing teaching their children. They have not lost their culture."

This reflects what might be the most remarkable aspect of the Brown family and the broader Walpiri people. Despite the forced and violent removal from their land, the devastation of their culture, the theft of their children, the incarceration of their youth, the infliction of poverty and the massacre of their people, they continue to put their faith in this court and this institution that the truth will be told.

Despite the lies that were told to them on the night of Kumanjayi's passing, the devastation and perceived unfairness of the criminal trial, the shocking evidence about the extent of racism within the Northern Territory Police Force and the repeated legal manoeuvres of witnesses to avoid giving evidence and avoid telling the truth to this court, they are hopeful that the truth will be told.

It is, with respect, an extraordinary statement of faith in our justice system that after more than a century of prejudice and devastation they put their faith in this inquest in the hope the truth will be told. The Brown family have demonstrated resilience, patience and respect at every step in the process.

Immediately prior to the criminal trial, Samara publicly stated that the Brown family simply wanted justice to be done. Following the criminal trial and the devastation of the family at that outcome, she again stated on behalf of the Brown family and their supporters that they put their faith in the inquest, that the truth would be told.

And each day they have sat patiently on the court lawns whilst their relatives have quietly passed, awaiting the truth. The Brown family respectfully submit, your Honour, that now is the time for the truth. Now is the time for change.

THE CORONER: Thank you, Mr Mullins.

Mr Beau.

MR BOE: Your Honour, can I get an indication on when you would like to adjourn for lunch?

THE CORONER: I have no access to time here.

MR BOE: It's 20 past 12:00.

THE CORONER: 12:20. I'll just get some - - -

DR DWYER: Your Honour, we normally stop at 12:30 for lunch. It's now 12:20 I'm told.

MR BOE: 12:22.

THE CORONER: Are you suggesting that we take an early lunch?

DR DWYER: Perhaps Mr Beau could indicate his preference. Do you want to get 10 minutes done now or - - -

THE CORONER: We can sit until 1:00, if people can manage. But - - -

MR BOE: I'm in your Honour's hands.

THE CORONER: I'm happy to sit until 1.

DR DWYER: May it please the court.

MR BOE: And it may well be though, I will be finished for sure by then, your Honour.

THE CORONER: Thank you.

MR BOE: May I just start by explaining that we've been asked to refer to the members of the communities in which the Walker, Lane families live, as Yapa, as we've done in our submissions, just so that those who are listening and may not be familiar with that term, understand. And we adopt counsel assisting's references to the non-indigenous community as Kartiya. So that explains some of the language I've been asked to use.

Now, I'll just start with acknowledging two events that have occurred in the last 48 hours. One of which involved your Honour in terms of the publication of the domestic violence inquest. And we submit with great respect, that it appears to us that there's probably no person in the Territory better equipped to appreciate the position of the Walker Lane families in the context in which they find themselves in this Inquest.

And we make particular note of three matters that your Honour is reported to have said, namely the reasons for high rates of violence in the Northern Territory were a variety of socio-economic historical and cultural reasons.

And secondly, and particularly important for us, these included the ongoing impacts of colonisation, including the impact of intergenerational trauma, systemic disadvantage and discrimination, cultural dislocation and removal of children, entrenched community attitudes towards violence, the expense of service delivery and challenges of recruiting and retaining skilled labour, geographical distance and remoteness of some areas and a lack of basic infrastructure.

The third observation in adopting Dr Dwyer's submission, it is a terrible waste of money to repeat investigations that result in similar recommendations, and it is a tragic waste of lives for them to be ignored or not seriously actioned. We make that acknowledgement because, in this address, we don't propose to go into any detail in terms of the evidence that we have covered in extensive submissions and your Honour has seen those matters.

And now is not the forum, as far as we're concerned, to delve into that detail. We make good our arguments. We've understood what's said against them and hopefully that has assisted your Honour to reach the right result.

In line with not sugarcoating matters, it is important to acknowledge that the added factor in this Inquest is that this death occurred in Yuendumu, a place which, as we have submitted, is a place where policing is failed project.

As noted by NT Health in their submissions, the Yuendumu Community is over-represented over all crime data; property crime was particularly prolific and while the Northern Territory has twice the rate of unlawful entries as the next highest jurisdiction in Australia, the rate of such crimes in Yuendumu is disproportionately higher again.

It is important, and I know your Honour will appreciate this, not to skip over or gloss over or worst still, ignore such damning statistics in viewing the context of the proposals for reform in the engagement of police with this community.

This Inquest also concerns a death in custody in circumstances where the evidence has shown that a very significant proportion of arrestees in the Territory who are then held in custody are Yapa and nearly all of the police officers who conduct these arrests are Kardiya or non-Indigenous police officers of whom the majority are male.

Although there has been debate about whether race factors contributed to this death, it cannot be doubted that issues of race and mistrust between the Yapa community in Yuendumu and the Northern Territory Police Force lies at the heart of this Inquest.

The context in which findings and recommendations must be made is that this is not the first time that an Indigenous person has been killed by a member of the Northern Territory Police Force, who has avoided any institutional or judicial consequence. In fact, none have ever been brought to account.

Now, before we proceed with some specific amplification of some of the findings, we ask that a short video which we note was recorded on 20 July 2022 be shown about the impact on his death upon the families and how they view this Inquest.

The video is of Lottie Robertson, who happens to be in court today, a senior member of the Robertson family and grandmother of Rakeisha Robertson. It compels all of us to reflect what the families hope from this Inquest. And may we have that video played now, your Honour.

THE CORONER: Yes. It may well be that (inaudible) will tell us, is there any update on playing the video?

THE ORDERLY: I have been able to increase the volume.

THE CORONER: Okay.

MR BOE: Your Honour, because the volume at times is not expertly captured, I do have a number of copies of the transcript that might assist your Honour in hearing. I'm happy to - - -

THE CORONER: That would be appreciated.

MR BOE: I'll distribute some copies to others who may wish it, including the people in the media or other parties at the bar table.

THE CORONER: And it may be that we would be able to add that to the website to assist people to understand.

MR BOE: Thank you, your Honour.

THE CORONER: It probably can't be done contemporaneously.

MR BOE: Of course.

THE CORONER: But we will - - -

MR BOE: And I am going to speak to some of those quotes for emphasis after the video is played.

THE CORONER: Thank you. There are multiple copies here.

MR BOE: They're two pages each. I'm sorry they're not stapled.

THE CORONER: That's okay. I'll hand those back and if they can be handed to those people who wish to be assisted.

DVD PLAYED

MR BOE: Your Honour, that was recorded three years, nearly, after Kumanjayi was killed and about three months before this inquest started. Because the sound wasn't that clear and perhaps some people listening may not be as bi-culturally competent as Mrs Robertson, may I just emphasise three things – four things that she said, which are terribly important to indicate the family – the position of the families.

These are Mrs Robertson's words:

> "This was a bad thing for the community that happened that day. Like, where they just – they can just come and shoot somebody like they do in the movies. It's hard to believe. Some police are good. These community police how they've been working here. They should be recognised for doing a good job. But the people like the ones who came in to do this thing, took a young man's life. He's not a hero. He just somebody who took somebody's life.
>
> You know we need the government to understand that these people, they are joining the police force. They can't just come and be tough in our communities. There are Elders in the community they can be able to talk to. We don't want another Rolfe coming to our community to do these kinds of things. We want to be able to work together – work together. That's a way we can remember that young fella, to be able to help other young people save their lives. It's very hard for me to talk about this all the time, because I lived with him. I cared for him. I cared for him in this house. My grandfather found – my granddaughter" - - -

Who's also in court today:

> - - - "found joy and happiness with him. We talk about him all the time. All our family do. And it's a very strange picture that we see all the time in our mind, how this life was cut short by a stranger, by a strange weapon."

Now, your Honour, as already has been submitted by counsel assisting, has received thousands of pages in written submissions, and I think there's about 5000 pages of transcript. So now is not the time for us to delve into that detail. If there's anything that we've submitted that your Honour seeks for us to clarify, of course, we'll do that. But we don't propose to rehearse the position in some particular matters.

Before I get to the three specific points, may I just indicate a mild disagreement with some of the contentions or submissions that counsel assisting made this morning. We don't disagree with the notion that the bush officers on 6 November 2019 should not be criticised in the way in which they conducted themselves. We are completely in accord with counsel assisting's submissions on that respect.

But in considering the matter, we do ask your Honour to take particular account of the circumstances or the structural communication issues as Dr Dwyer conceded, as to the non-awareness within such a small community, within such a small police station, of the fact that there was a funeral – well, sorry business being undertaken in the community at the time of that arrest attempt.

Particularly in circumstances where ACPO Williams, who was on duty the day before with Sergeant Hand, was one of the people attending that community. It seems unacceptable that they did not know that one of their colleagues was having a funeral and the cultural importance of that, and to preserve – or take steps that accommodated that in terms of arrest situations.

The second aspect we ask your Honour to take into account in assessing counsel assisting's submissions on this issue, is the non-utilisation of ACPO Williams on 6 November attempt, in circumstances where we all know that notwithstanding that he was related to Kumanjayi, he had arrested Kumanjayi several times in the past peaceably and in circumstances where it sometimes took hours for there to be trust exchanged between the arrester and Kumanjayi for him to come in safely.

Now, there are five matters which will focus attention on in the next 15 minutes. As you've seen in our reply submissions, we've urged the finding that Kumanjayi was dehumanised by various institutional systems in the Northern Territory including the criminal justice, juvenile detention, child protection systems and the Northern Territory Police Force.

It's important to remember in understanding his vulnerability that he was orphaned at 12 after his parents died at ages 31 and 40 respectively. Those statistics relating to him are a poignant reminder of his vulnerability from the start of his life.

And whilst we must not sugarcoat his experiences, we would ask your Honour not to put too much weight on any criticisms that may come of our clients, our families and the way in which they sought to step in once he became orphaned or once he came into their care.

It seems unique within First Nations across the country that people do take care for children who are not theirs at a much higher rate than the non-indigenous community. That they have not been able to fully address all of his vulnerabilities and that this should not be sheeted to their conduct or their behaviour. They have tried their best within the system that is woeful for all of them.

Now, it's all too predictable that the failure of agencies responsible for his education, healthcare meant that his young life was defined by interactions with an agency with no such mandate or capacity to address his disadvantage.

The Northern Territory Police Force with which he came into contact on 9 November, more than five years ago when still a teenager, was not only one with a

long and dark history of racism which has been acknowledged including, of course, the Coniston massacre but one within which racism was alive and well.

He was killed by a Kartiya man who referred to Yapa as neanderthals and coons yet told your Honour with a straight face that he's not racist. It cannot seriously be contended that racism and systemic dehumanisation of Kumanjayi did not inform the events on 9 November 2019.

Second, and your Honour has seen a large part of our primary written submissions, focusing on the finding at the entry into Kumanjayi Walker's grandmother's house, House 501, was unlawful.

We are not going to delve into the detail of those submissions. Former Constable Rolfe has never asserted that he had the requisite belief that Kumanjayi was inside the house. And clamed and maintained that he had been given permission to enter.

While some, including the Northern Territory Police Force, seem to be "uncertain" about this assertion it is plainly and manifestly untrue. Worst still the Northern Territory Police Force and some other parties remain "nonplussed" that this entry was unlawful and the force (inaudible) any institutional responsibility for what happened at that house other than recognising along the way a catalogue of errors by various officers.

Your Honour has all of the body-worn video which captures the entirety of what former Constable Rolfe and the IRT did once they got to Yuendumu. None of them had been there before and their disrespect is palpable.

Leaving aside all of the legal arguments, what is clear and apparent is that Rolfe and his entourage mimicked what they had learned in the ADF. Brandishing military weapons to be a show of force, an instruction given by Sergeant Frost. They creeped into this community and to utilise or paraphrase Lottie Robertson's words, "Strangers carrying strange weapons."

Former Constable Rolfe and his IRT colleagues were "clearing houses" to use his language and with the arrogance and belligerent disregard of people embodying the confidence of unaccountability.

This reckless conduct, and that of former Constable Rolfe in particular, created a completely unavoidable yet predictable circumstance of what has been called officer induced jeopardy. Not a term used by us but by senior members of the force itself.

While this description is accepted by the Northern Territory Police Force, alarmingly to us, they refuse to hold anyone meaningfully accountable for this catastrophic police operation.

The third point is that former Constable Rolfe should not have been accepted into the Northern Territory Police Force. And having been accepted he should have been dismissed well before 9 November 2019.

The Queensland Police Service quickly determined that Rolfe was not an appropriate candidate while the NTPF found him to be a, "prime candidate." Former Constable Rolfe then went on to demonstrate his willingness to use excessive force, disobey rules around the use of body-worn cameras, communicate and in racist and homophobic language and perjure himself.

The Northern Territory Police Force failed to identify what was apparent to the Queensland Police Service and then were willing to tolerate a standard of candidate and ongoing behaviour that was woefully inadequate, dangerous for the people they were charged to quote "serve and protect" and ultimately fatal for Kumanjayi.

This candidate then concealed his deteriorating mental health, his diagnosis and pharmacological treatment with a drug which according to Professor McFarlane, "Is associated with an increased risk of committing violent crime in younger adults." And which was, "Likely to have impacted on his capacity for behavioural inhibition to threat."

It was this NTPF officer who stormed through the community of Yuendumu as they were in the midst of sorry business. Ignoring instructions from a senior officer, perhaps because she was a woman, as part of a leaderless, heavily armed and undisciplined team with a singular purpose of arresting Kumanjayi as soon as possible completely unmindful of important cultural matters in by whatever means he thought necessary.

The fourth point is that the families commend your Honour for withstanding the specious and thinly veiled attempts by former Constable Rolfe to derail this inquest. Aside of from the myriad of findings that must be made about him and the Northern Territory Police Force it cannot go unobserved.

That even when finally compelled to enter the witness box he showed little, if any, interest in assisting this inquest. His focus remained on a misconceived and patently untenable attempt to protect only himself and deflect and deny any responsibility for his role in what occurred.

By the time he gave evidence he got to the point, to use his words, "Of being bored with the whole situation." Transcript page 58708. He has held steadfast to this narrative that he is the heroic police constable who saved a colleague.

Despite his efforts and those of his supporters he has been revealed to be a person who had no interest in gaining an understanding of the culture and people for whom he held a duty of care as a police officer.

He freely used racist language in a range of contexts including while on duty as a police officer albeit only in communications with other police officers evidencing a racist disposition.

He was ever ready and enthusiastic about using use of force including excessive force. He regularly failed to use body-worn video when he should have and when he did he at times used it to manipulate the depiction of important events.

He thought he was okay to game a disciplinary process. He had a disregard for his superiors and bush cops. He was suffering from a mental illness. He was taking medication and declined to disclose both matters.

And on the day of the shooting he deliberately and arrogantly ignored Sergeant Frost's plan for a safe arrest as explained by counsel assisting supported by those who knew and had dealt with Kumanjayi before.

The fifth, and I will finish by 1:00, your Honour.

THE CORONER: Thank you.

MR BOE: Former Constable Rolfe is correct is submitting that this is, and should not be a Royal Commission into him. However, the focus on him has been absolutely necessary to investigate what led to those 2.6 seconds when he shot Kumanjayi at close range on 9 November 2019 knowing that his actions would likely kill him.

Having said that, too much focus on Constable Rolfe, former Constable Rolfe, creates some smokescreen for the Northern Territory Police Force, which has submitted that the events of 9 November 2019, quote:

> "May be an example of the overly zealous, wilfully impulsive or overly assertive policing style demonstrated by Constable Rolfe."

That may be true. But the force cannot be acquitted of responsibility for the reasons we have referred to earlier and in our written submissions. It is of great disappointment to the families that the force, while acknowledging these mistakes, submits to your Honour in their nearly 500 pages of submissions that there should not be any consequence for any one of the members of the force whose failings contributed to the avoidable and reckless policing disaster that unfolded and resulted in Kumanjayi's death.

The NTPF through their counsel does this in two ways. Firstly, by argument that there should be no argument, no examination, finding or recommendation in this forum about what happened in House 511. As your Honour knows, we've given you detailed submissions about why that argument is misconceived.

And secondly, by presenting their engagement of Executive Officer Leanne Liddle, who I understand is in court, as impressive as she is, as being a complete

panacea to any suggestion that an adverse finding for recommendations about systemic reforms should be made. It is telling that after the families filed their original submissions nearly three weeks ago, where we pointed out the absence of evidence of what Ms Liddle is doing, the context in which her independence is being guaranteed and what resources are being provided to provide an independent analysis into the documented failings, no attempt has been made to put any evidence before this court, other than statements in their submissions and submissions from the Bar table.

Your Honour should not refrain from making recommendations about reforms within the Northern Territory Police Force on account of broad and lofty assertions that are made about having already adequately adopted reform measures. Embracing Ms Liddle's observation in her evidence that change would require more than hollow words, which I quote, "Require more than hollow words, tokenistic window dressing, symbolic gestures and actions," in the absence of some concrete evidence about what reforms are being implemented, has left this inquest – left with more – sorry, excuse me. This inquest is left with little more than just that.

We urge your Honour to recommend that the Northern Territory Government repeal the immunity provided in s 148B of the *Police Administration Act*. The idea that in the Territory a police officer has a special immunity protecting them against criminal responsibility, exemplifies the inherent racism in the system of policing on the Territory.

Such privilege and the unaccountability that accompanies it can only act to embolden those predisposed to the use of excessive force and violence in the course of their duties, duties which have them dealing with the most vulnerable and disempowered in the community against lethal weapons.

As evident from Mrs Robertson's evidence, but using our words, the stain of this killing is already steeped in the upper sense of injustice, compounding their memory of past injustices such as the Coniston Massacre. A stain that will only be cleansed by truth telling about all the circumstances that led to Kumanjayi's death. No matter how painful some individuals and some leaders of government agencies may feel about being exposed from negative and racists attitudes about (inaudible).

We're very confident, your Honour, and with great respect, that we don't need to give your Honour a lecture as to issues of race, racism and racial discrimination. But there was a report released yesterday, which I bring to your Honour's attention. It's a report of the Human Rights – National Race Discrimination Commissioner, which was released yesterday and received some reportage in the Guardian Australia this morning.

And I just want to finish with a few aspects of that to make good our point of how the notion of systematic racism remains an elusive issue for many at the Bar table to grapple with. The news report included, quote:

> "The National Race Discrimination Commissioner said it was the first time Australia had a comprehensive plan to tackle deeply embedded racism across the country. Through our consultation process we heard consistently from First Nations and other negatively racialized people that systemic racism is deeply embedded throughout Australia and requires an urgent national response."

In the time that I had this morning, I did go through the report. But there are five paragraphs which unsurprisingly correspond with some of your findings in the inquest from two days ago. We give that, not for your Honour's assistance as much, but also given the strident positions taken by the force and NT Health about their rejection of findings and how offended they are about the notion that such a finding might be made.

These are the quotes from the Commissioner:

> "We cannot effectively address racism and the harmful impacts it has without acknowledging its existence and then taking powerful action to condone it. Firstly, we must recognise that Aboriginal and Torres Strait Islander peoples as a first peoples of this continent, have a distinct experience of racial injustice that arises out of their status as colonised peoples with unseated sovereignty and a denial of their self-determination."

The next paragraph is probably the most important in the current context:

> "At a basic level racial literacy is about equipping people with the tools, confidence and capabilities to understand and challenge racism. If we only understand racism in its interpersonal forms, it's easy to say that we aren't part of the problem, because we aren't saying or doing racist things to other people.
>
> However, when we understand structural racism, we know that we also have a responsibility as individuals to actively dismantle the implicit racism in the systems and the institutions we are a part of. Challenging the status quo is not an easy task. We have the strength to do it. The time to do it is now."

The last matter I wanted to point to, and it may be slightly out of context, is that counsel assisting made the submission that there should not be any criticism about the way in which the members of the police force responded after Kumanjayi had passed away.

In evidence Leanne Liddle was asked about this specifically, I think by Mr Mullins. "A second example is that the evidence is that Derek Williams, a serving ACPO was in the community on the day that Kumanjayi Walker passed." And then the question goes onto essay the fact that they weren't allowed in and the fact that Derek, ACPO Derek Williams was not told the truth.

Ms Liddle's answer is, "That's another example of distinct racism or overt racism and systemic racism in the system." We join in that criticism. It's not about people acting out of fear, which – and concern of personal harm. Of course, we can embrace that. I've never been in that sort of situation. I can't criticise the way in which people may wish to protect themselves in priority over other issues.

But that is behaviour which falls into the structural racism to make the assessment. Because they're Walpiri and some of us have dealt with him in the past and they're an angry mob. We're not going to do the decent thing on this occasion when it happens on our watch. It's in those circumstances that we submit that your Honour is not alone in this vital conversation of understanding racism.

However, your findings will be utterly important in assisting all of us in what must be done into the future. Thank you, your Honour.

THE CORONER: Thank you, Mr Boe. I think it's the lunch hour. We'll adjourn for – what time is it now?

DR DWYER: It's now 1, your Honour. If we return at 2:00.

THE CORONER: Yes. We'll return at 2:00.

DR DWYER: Thank you, your Honour.

ADJOURNED

RESUMED

THE CORONER: Yes. Who is going next?

MR MCMAHON: I am, your Honour.

THE CORONER: Thank you very much, Mr McMahon.

MR MCMAHON: If the court pleases, as your Honour knows, I appear with Mr O'Bryan for the Parumpurru Committee. And in Walpiri language, that word Parumpurru means justice. In making these submissions today, remember that our client seeks from this court especially one thing, as Mr Mullins has raised, which is the truth. And that will guide some of the propositions we deal with today.

And I might remind your Honour, if I may, that on the very first day of this inquest, one of the most senior Walpiri Elders, Robin Japanangka Granites came to the court and said, "We are here to speak the truth. We have always spoken the truth, because all we have is our truth. We do not want you to tell us what we need and what we want."

Before I address some of the more legal matters, there are two preliminary points that should be made on behalf of our client. And the first one has been touched on by Mr Mullins. And that is that for every single day of the inquest over months and indeed, years, and the timing of it was until the last witness left the witness box, which is when the lawn was brought to an end, a collection of on the lawn.

Our clients sat out there on the lawns and they did so to remind us all, all of us, that it's our collective responsibility to get to the truth. And secondly, it must be remembered that by attending and constantly following the inquest, our clients, and of course, particularly the families represented by counsel who have already spoken, they repeatedly faced the trauma of the shooting and its aftermath. It wasn't just attending; it wasn't just demanding that we search for the truth. It was doing all of that while repeatedly facing and dealing with the trauma of the events under investigation in this inquest.

What we propose to do in these submissions is to identify a number of disputes where we've had a particular interest and been particularly engaged. Obviously, it goes without saying, we can't address more than a few. The first matter to briefly mention is scope. In the final report of the Royal Commission into Aboriginal deaths in custody, it was said by the Commissioners, "To understand the last hours of life of each individual and to truly understand the circumstances of their deaths" – your Honour will pick up the language in the current Act.

Commissioners had to know the whole life of the individuals. Now, the video of the IRT in the police – from IRT and what they did on 9 November 2019 in the remote Aboriginal community minutes after arriving, up until the time of the shooting. That's only some of the disturbing evidence that this inquest has analysed. A lot

more has needed to be analysed and to be unravelled to understand how the circumstance came about.

Some of the parties in their submissions have sought to very much limit the scope. But we say that to understand how the circumstance of this killing came about, it includes examining the manner of policing, including community policing in Yuendumu, both generally and at that time. The manner of policing by the IRT, both generally and at that time.

And given the consolation of circumstances of this case, it's necessary to examine the attitudes and understanding of all of the principal players who are involved. And indeed, as the inquest unfolded, it became clear that it was needed – necessary to examine the very functioning of a remote community to understand the interlinkage between the standard of living, the way of living and how it could be that police could behave as they did on that night, moving through the community in the way that they did. And I'll say more about that later.

But what it presents this court with is an entire mosaic. And it's that mosaic which in effect, we say mandates the scope both of the inquiry of the inquest and its outcome and where your Honour goes with findings and recommendations. Through the inquest, the Parumpurru Committee has been focused primarily on the future.

Our clients (inaudible) Yuendumu and will do so. They are the people most concerned with preventing further such deaths. They wish to live in their community harmoniously and safely, including in all their dealings with the police at Yuendumu. And it is with that in mind that these submissions are made and focused.

The first issue I'll deal with is guns. And I propose to deal with a number of issues and perhaps juxtapose the positions and show, if I may briefly, where the debate lies. In our cross-examination through the inquest, we explored with numerous witnesses the need for police to wear guns on their hips in Yuendumu. Not everywhere in the Northern Territory, but just in Yuendumu.

And we showed through the evidence that there are numerous countries, including countries with remote rural areas, comparable to Australia, such as New Zealand or Norway where police routinely do not wear guns on their hips. In the answering submissions from the police force and the Police Association, two points in particular emerged.

First was the submission which might be summarised as saying that the police absolutely need to wear guns on their hips for the reasons set out in those submissions. And second, we say that the submissions reveal a failure, really, to address the realities that police in other comparable places do not wear hip guns.

So the dispute is clear enough. At the start of the inquest, senior Walpiri Elder Ned Jampijinpa Hargraves addressed the inquest and said, "No more guns in our communities. The police must put down their weapons. We cannot walk around in

fear in our own homes anymore. We do not want any police officers to live and work in our communities with guns and other lethal weapons."

Although one way of looking at this dispute, some might suggest is to say that the police know best. We reject that analyse. Rather, we say that those who have lived their lives in Yuendumu, who carry leadership responsibility, who remember events over years and decades, events of crime, of policing, of good times and bad, their lived experience is that police carrying guns is not needed or wanted.

Other counsel in many written submissions, including ours especially, I suppose, have set out the long and terrible history of violence against Aboriginal people in the Northern Territory. The effects of colonial brutality remain a constant. And as the events of 9 November showed all too clearly, conduct which have caused outrage in other places within Australia, can pass for normal, when those on the receiving end of that conduct are Aboriginal people.

An obvious example is, of course, the deploying of a group of police commonly called in this inquest, through submissions, "paramilitary group of police" into a row of homes carrying a dangerous rifle, and AR15 military rifle - despite women and kids being everywhere, using threatening language against a woman who speaks up and asks, "What on earth are you doing?" Jumping fences into homes.

Now, senior police have said in their evidence this kind of policing isn't normal policing - it's not community policing - it's not good policing and, as we say, it doesn't happen elsewhere in non-Aboriginal communities.

So when someone says, "Well, the police know best" and they say they now best about carrying guns in communities - the community at Yuendumu hears a sub-text. And what is that sub-text? Part of its that although from year to decade to decade no person in Yuendumu shoots a policeman. The answer is, "Well, one day they might shoot at a policeman, so we, the police, need to continue with our guns in our holsters and we get pushed out on the community with our guns in our holsters."

Our argument, amongst others, is that if the police at Yuendumu on 9 November had done their job properly, quietly, respectfully, talking, making, there was no need for guns - no need for shooting. And this was repeatedly said, no-one from the Parumpurrua committee is arguing against police having guns at the station or locked in vehicle and close at hand. And one of the good things to have come from this inquest is that already in their submissions, the Northern Territory Police Force have said that it may be possible to develop an agreement as to when it would be normal for police to wear firearms in community, so it's a start. And we strongly welcome that possibility. We urge it as an absolute minimum as a recommendation to that effect.

There are numerous police over the years that worked in Yuendumu who are held in high regard by that community. Long after this inquest is over our clients will be there, living at Yuendumu, every day engaging with the police. It's necessary and

essential that that relationship works well and every recommendation we make has that principle in mind.

Another issue where the parties are in stark dispute is the question of using dogs in policing. And as we say in our written submission, there are few issues in this inquest which throw up quits so starkly the chasm between police and the Aboriginal community as to the use of dogs against humans.

And, of course, not only were dogs present on 9 November, police dog present on 9 November, but Kumanjayi Walker himself had previously been hospitalised when, as a youth and absconding from youth detention centre, he was chased, tracked down and bitten and hospitalised as a result of a dog attack - police dog attack.

So the issue really becomes are they a useful policing tool or an instrument of aggression? And whatever the theory might be - which is set out in the police submissions, the reality is that the use of dogs in the Northern Territory is heavily weighed against Aboriginal people. It's they who are arrested in such great numbers and because of that there is no mistaking that using dogs is burdened with racial implications.

Youth detention in the gaols are overwhelmingly filled with Aboriginal people but we are narrowing the debate. Our submission is focussed only on the use of dogs at Yuendumu and your Honour has heard evidence about the fear in that community of police dogs.

And so with the guns debate, it's essential that relationships between the community and the police works well. The evidence is that dogs harm that relationship and we urge a recommendation that police take the step of not using police dogs in Yuendumu.

I deal very briefly with militarisation because it's been dealt with so substantially in submissions, but contrary to the position of the police force, we say that the IRT was plainly infected by military mindset. The military style weapons, military style uniforms, the attitudes of IRT revealed in their texts and military style tactics where the arrest of Kumanjayi was seen as a prospective snatch and grab, from Kirstenfeldt's evidence.

Professor McCullough has spoken of the international experience of militarised police forces and in our submission the Territory shows clear symptoms of that problem and we urge a finding and recommendation to the effect of steering the police force away from the practices which have led to that conduct.

Counsel assisting go at some length this morning with lies of Mr Rolfe. Now, as is already plain from everything I have said so far, much of what we deal with does not concern Mr Rolfe and despite Mr Rolfe's submissions in this inquest, much of what the inquest deals with does not concern Mr Rolfe. But he is a central police

figure in the narrative and his conduct answers in the inquest have increased his centrality as a figure in the inquest.

For a long time much of the truth about what happened at Yuendumu on 9 November was really known only to very few. The trial was run - as most criminal trials are understandably run, on the narrowest of grounds on the intent and perception of Mr Rolfe at the time of firing only the second and third shots and, as I have already dealt with briefly on the question of scope, what was not part of the trial but is relevant to the inquest are the broader circumstances surrounding the killing and one issue that remains very much in dispute is the question of whether Mr Rolfe has lied on the (inaudible) of whether Kumanjayi Walker reached for Mr Rolfe's gun and put his left hand on Mr Rolfe's gun.

And despite what some parties to the inquest say, we say this is a matter which is relevant and important and part of the task of finding out the truth of what happened.

So hand on gun issue is an alleged fact which occurred prior to the first shot being fired. Indeed, prior to the gun being drawn at all, and it is a matter alleged by Mr Rolfe both at trial and here.

Now, one reason an analysis of this is particularly relevant is because the character of Kumanjayi Walker has been systematically attacked in some places since the time of the shooting by a variety of interested parties.

So if the evidence demonstrates that at a critical moment central to what Mr Rolfe says happened, that Mr Rolfe is indeed lying about what happened, and what Kumanjayi Walker did, then that fact should be examined and understood.

In our written submissions we and others have traced what Mr Rolfe has said about this. A number of parties at the inquest directly put to him - including counsel assisting and Mr Mullins, that what he said about this was a fabrication and so far as we are aware, no person who has seen the videos except Mr Rolfe alone says in this court in any statement, in any analysis, in any submission that the video shows Kumanjayi putting his hand on the gun - only Mr Rolfe says that.

And given that there is considerable evidence from other parts of the inquest that show that Mr Rolfe is an untruthful witness, the court can find as an absolute minimum that there is no reliable evidence to suggest that Kumanjayi put his hand on the gun and secondly, that Mr Rolfe lied about Kumanjayi Walker doing so and if your Honour does find those facts then Kumanjayi Walker and his community at the very least, deserve a finding to that effect.

I will deal briefly with another issue of dispute which others have covered in some ways today, is the question of the relevance of whether Mr Rolfe was unlawfully violent in carrying out his duties in the lead-up to 9 November and we say it's important because it affects an assessment and an understanding of the shooting on the 9th and in turn, this impacts on possible findings and recommendations.

And we have submitted that the evidence obtained through technology - through the body-worn cameras, text messages, the videos of the computer records, in combination, show that Mr Rolfe was often unnecessarily violent when carrying out his duties, that he was violent against Aboriginal people, that he left a trail of evidence to show that he thought this conduct was humorous and the evidence regrettably shows that this conduct was done with an attitude of contempt, indeed racist contempt for Aboriginal people.

Again, regrettably, taken as a whole, the Northern Territory Police Force has failed in its role of protecting the community from such behaviour.

As we have said elsewhere and we don't hesitate to say again, we do not criticise every officer. We do not at all take an anti-police position. Quite the contrary, as I have already said today, our clients will be living with the police and hopefully working well with them for the rest of their lives in a small community.

And we readily acknowledge how impressive and thoughtful numerous police officers have been at the inquest and no doubt, the force has many more such members. And we know from our client the respect that some police have earned at Yuendumu in their service there.

But when the videos are viewed collectively, a horrifying picture emerges. We say effectively, with Rolfe lying about what happened at some instance, that those checking the videos effectively waving his conduct through, others failing to adequately call Rolfe or his supervisors to account, or whenever he is called to account, it amounts to effectively no real holding to account.

What we see is systemic ongoing violence against Aboriginal people without meaningful consequences when examined within the Northern Territory Police Force.

We say that often conduct which should actually be seen as violent criminal offences, such as smashing Mr Bailey into the wall, or assaults such as throwing two helpless drunk men at Erldunda Park to the ground, or hitting Tyson Woods at his car when he was standing there talking to Mr Rolfe.

All this conduct is so obviously unacceptable that it remains to this day astonishing that Mr Rolfe continued in his role. And so we adopt the submissions of counsel assisting that the processes of review are so seriously deficient that urgent reform is needed in this respect.

All of that is, of course, extremely significant in itself, but it matters all the more because this ugly character traits which we've identified were not left behind on the Tamani Road as Mr Rolfe turned off into Yuendumu on 9 November. They affected and infected his conduct prior to that day and on that day.

We say, respectfully, it serves no worthwhile interest to deny or deflect this. Just as all the conduct on the day forms part of the circumstances, so too do the attitudes informing such conduct. Such an historically informed analysis is not necessarily valuable or appropriate in every inquest, but it is in this Inquest.

Our task here is to urge that the truth be found and a key reason is so that we, our clients, do not see a repeat of this behaviour of another young Aboriginal person being shot by someone with a demonstrated known history of racist violence unchecked and continuing to serve.

On the question of systemic racism, the Northern Territory Police Force has addressed this at length, this question of systemic racism, in its submissions concluding that the evidence neither establishes its presence, nor establishes a sufficient link to events on 9 November.

Where the evidence of racism ranges from evidence of multiple officers, police officers, at the Alice Springs Police Station as to its prevalence, the extent of the TRG awards over the years, who is demonstrated by the violence, not just of Rolfe, but of numerous others in the videos and which repeatedly did not lead to any meaningful sanction.

Considered too with the texts of Rolfe and others, the texts of numerous other witnesses, it is frankly perplexing to read that the Northern Territory Police Force does not accept that there is systemic racism. And again, it cannot and should not be submitted that the presence of systemic racism tars every member.

On the contrary, as we've already said, numerous members who gave evidence were impressive and no doubt disgusted by racism. It's not one brush fits all. But important parts of his evidence do reveal systemic racism and they were part of the chain of events that put Mr Rolfe in Yuendumu with his well evidenced and entrenched attitudes and conduct on 9 November. We submit that the court should have no hesitation in finding systemic racism in the police force.

If I can deal briefly with cross-cultural training, it surprises me little how enthusiastic we are on this issue compared to some of the others, but let me explain briefly why. In his 3 August Gan'na speech, Commissioner Murphy said he was committed to and I quote:

> "Enhanced recruit training and ongoing professional education, especially for commissioned police officers with an emphasis on racism, history and the importance of human rights."

So there's something of a dispute between us and the police union and the police force as to how much enhanced education there should be. And we welcome the commissioner's commitment. However, contrary to those submissions of others, we say that the events of 9 November are clear evidence of the utility of such further training and such education, and that it should be extensive, measured by weeks, not days.

It would be a mistake to regard this submission and this argument as merely an academic one, because we say, properly understood, it has dramatic practical effect. The results of such further extensive training would repay the effort in two tangible enduring ways which far outweigh the responses put in other submissions.

First is that the Northern Territory Police are extensively educated in Aboriginal culture and they will continue to add to that learning in valuable ways wherever they go in the Northern Territory and they will have a proper foundation to do so from their training. It won't be ad hoc, it will be systematic and across the floor, so from this, their policing will be much enhanced.

If the IRT had been trained in this way, as we have been suggesting through the inquest, events on 9 November would have included moving slowly and patiently, giving full weight to the importance of a funeral and Sorry Business, giving full weight to the cultural need to talk, to be patient, to involve family, and of course to involve ACPOs.

There would have been no need for confrontation, an arrest or shooting, if they had been properly educated in the areas that I've just identified. In other words, by a better and deeper understanding of Aboriginal culture, the practical task of arresting Kumanjayi would have been carried out very differently and we wouldn't be here today. With deeper knowledge will come better policing.

And the second reason that we say it's a good idea is not one that we're qualified to comment on, but in our view, such training would be invaluable as a marketing tool, because it would draw high quality recruits who were already attracted to the unique policing experience that the Northern Territory offers would be further attracted by the idea of belonging to a force elite also in its understanding of the rich culture of which it works as a police force.

In his Gan'na speech on 3 August, Commissioner Murphy said that the community should never fear their police and the police should never fear their (inaudible), and I quote:

> "So from today -" says Commissioner "- we must, and it will change under my leadership as the Commissioner of the Northern Territory Police, I stand here today to publicly commit to lead that change, to transform relations between police and Aboriginal people. It will not be a reset. It will not maintain the status quo. Instead, I intend to develop a new relationship borne on mutual respect, trust and human rights."

So we urge this court to accept those words of the commissioner and apply them to the findings and recommendations that we see concerning the carrying of guns, the use of dogs against people of Yuendumu and allowing community leaders to meet and discuss new police candidates to be stationed at Yuendumu, as we've set out in our submission.

On all these questions, in accordance with what the commissioner said on 3 August, he and his command need to have confidence and trust in the Elders. Last week is one of Yuendumu's most senior Elders said to me on these issues that I've just outlined, "Why don't they just try it, then they will see how well it works, and then it can be done elsewhere too."

These are the changes that the community wants. And as the Commissioner said, he will not maintain the status quo these changes do change the status quo. The court has heard a lot of evidence about Kumanjayi Walker. As likely was born with FASD, his hearing difficulties, his disrupted education and difficulties engaging at school, his living in overcrowded and deficient housing and ultimately, his regular engagements with the criminal justice system.

Two essential outcomes from the inquest are first, through public evidence to make as clear as possible what actually happened and how it came about. And secondly, for the court to make findings and recommendations. But as our clients have been saying to us, what is going to change, after all. Much of what has been learnt by the public through this process, and to some extent admitted by various police officers, is well known to our clients. Racism, brutality, lies are not strangers to our clients.

Kumanjayi spent much time in custody as a teenager, including in the notorious Don Dale Youth Detention Centre. And given what we know of that place, we can assume he was exposed to some horrors there. And as he got older, he remained caught up in the justice system, regularly being detained. So what lessons have we learnt about that, about rigid systems of punishment, where the process obscures the purpose.

And so with sadness and with anger, our clients ask us, us lawyers, we who have the privilege of appearing for the Parumpurru Committee and for the Elders of Yuendumu, they ask us what has Kumanjayi's trajectory taught us. Who is learning from these failings. How is it when the life of a troubled young man is so fully analysed as in this inquest, so publicly examined, how do we suddenly, once again, have the age of imprisonment reduced back down to 10-year-olds. That's what we are being asked.

How could society, once again, be reduced to saying 10-year-old children can be gaoled, will of course, be Aboriginal children, including perhaps children from Yuendumu. How can these 10-year-olds be gaoled and have spit hoods put over their head. And bearing in mind all of the evidence that we've heard in this inquest, they rightly ask, how would gaol and spit hoods have helped a young Kumanjayi Walker. It beggars belief.

One might simply ask how much youth crime would end, how much public money would be saved if the government provided well-funded, well-resourced youth centres open 24 hours a day, providing support, safety, counselling and very importantly, food and a place to rest and be safe.

A significant part of our questions in the inquest and our submissions concerns community leadership. And as we've pointed out in our submissions and repeatedly through the inquest, to understand the myriad of factors that contributed directly to Mr Kumanjayi Walker's death, it's necessary to understand the systematic disempowerment of the Yuendumu Community since the late 1990s, in particular, since the intervention in 2007.

We've dealt with in our submissions, and so have others, how the failure of the intervention has affected the communities, and the stripping of local power and authority has affected the community and the consequences of it. The creation of super councils with the consequences of it as well.

And in the inquest, we regularly put questions to the effect of supporting an elected leadership group in Yuendumu to numerous senior officers and members of the Yuendumu Community, as a means of providing community control over the delivery of services. We say it's a practical recommendation that would materially improve living standards in Yuendumu.

And of course, it's relevant to the inquest, because such a group, such a leadership body would have very likely altered the outcome of some of the events, if not all of them, on 9 November. The debacle concerning the Health Centre, which others have gone into in much detail. If there was a leadership group properly consulted, speaking on behalf of the whole community, would we have seen a different outcome. One is very tempted to confidently say yes.

If there was such a leadership community group in dealing with bringing in a young offender like Kumanjayi, after a funeral, would there have been a different process and a different outcome. In our submissions at 265 we've mentioned a recent development which is the creation of the Kurdiji Wita Cultural Authority. And it's appropriate I just briefly inform your Honour of that. It's not in evidence but it's not controversial and it's a matter of statutory record.

Kurdiji Wita is a recently incorporated corporation. It's registered with ORIC, the Office of Registrar and Indigenous Corporations. It has a number of purposes which pretty much mirror what was put to your Honour through the inquest, which is why it's necessary to bring it to your Honour's attention. And it includes a leadership group which is made up of each of the skin groups in Yuendumu and leaders from each part of Yuendumu.

And in par 264 we set out some of the objectives, which include to form an organisation which represents and reflects Walpiri people and values; to (inaudible) social disintegration by promoting programs and policies in accordance with Walpiri culture; to develop strategies and practices for service delivery appropriate to the needs and requirements of the communities.

Now, that would have been absolutely on point on 9 November. Such as housing, essential services, food, safety, law and justice, and to work collaboratively with both Territory and Commonwealth Governments. Now, we're bringing that to

your attention because it's a new corporation and at the moment – in our submissions we've made recommendations or sought recommendations or findings concerning the engagement by agencies and the police with the community of Yuendumu.

And at all times we've been putting to your Honour, that should be through the Parumpurru Committee. That's still the case, because the Kurdiji Wita Cultural Authority is brand new. And so it's still a question of dealing with the Parumpurru Committee. But the expectation would be over time – and unfortunately, as I stand here today in front of your Honour, and your Honour has to write down findings at a point in time, we're in a period of transition. The expectations over a period of time, that would be a development body. But Parumpurru Committee still is the relevant body.

The new body does not describe itself as being ready to get up and do all of these things immediately. And your Honour just needs to have some appreciation of that complexity. The inquest has already shone a bright light into some very hidden places. And it's certainly the hope of our clients that this court will make findings and recommendations which will be listened to, and which will lead to the prevention of any such recurrence.

The truth is that after he was shot and handcuffed and dragged across the dirt, Kumanjayi Walker cried out to his captors. He was dying, he was barely educated, he was in agony. But even so, he saw, and he said what was truly happening. He accused the police who had done these things and who were with him, as follows. "You mob got no respect. Shame on you." In eight words, despite all of his disadvantages in life, he summed up pretty much everything we're doing here and analysing.

Your Honour, our client acknowledges with gratitude the efforts made by the court and staff to engage with them as a community through the lawns and other means to make the inquest accessible here or wherever they might be. If your Honour pleases.

THE CORONER: Thank you, Mr McMahon.

Mr Boulten, is he the first person to speak for NAAJA?

MR BOULTEN: Yes, I am.

THE CORONER: Thank you. Thank you, Mr Boulten.

MR BOULTEN: Thank you, your Honour. I firstly thank your Honour for leave to appear from Gadigal Country, a court in Sydney. I apologise for not being there. I also wish to pay respects of Kumanjayi's family and to his community and to all the Aboriginal elders who are present in the inquest today.

Mr Espie will deal more objectively with racism and policing in the Northern Territory. Ms Mishra will focus on excessiveness of force and Mr Derrig will turn to police accountability and some in-purpose submissions about health issues and then Mr Murphy, Dr Murphy, your Honour, will sum all of that up.

So, your Honour, Kumanjayi was a young man who was killed by a racist, violent police officer who is now publicly disgraced by the evidence in this inquest. He was generally regarded by his colleagues, and even those above him in the line of command as the overall round constable who (inaudible).

He shared with his workmates private moments of contempt for Aboriginal people and (inaudible) bush cops in an unabashed racist, misogynistic and sometimes homophobic text messages.

They all thought their privately expressed views were safe but now they've been exposed and well aware of them maintained they're not really true reflections of their true attitudes except, perhaps, in many aspects Mr Rolfe who now has revealed others.

NAAJA's involvement in this inquest he certainly rambled a certain Aboriginal controlled organisation to probe systemic institutional issues relating to Kumanjayi's death.

Counsel assisting, the lawyers for the families and the community have joined with NAAJA in that process along with the other institutional parties in the aim of identification of the killing issues has allowed it to (inaudible) and are very, very grateful for the (inaudible) your Honour as provided the parties in this inquest.

For the most part we agree, respectfully, to the findings outlined in counsel assisting's written submissions and her oral submissions to weigh but there are some differences and I regret that because of the nature of this response some of what we're talking about is the direct response to differences.

The major difference is that NAAJA has focused much more in terms of structural and institutional aspects of racism and then to have NT Police and how institutional racism in the NT Police brings about excessive force and did so on this fateful occasion.

To the extent there's a divergence our submissions outlined, our view on the evidence, essentially NAAJA submits that the evidence shows that there is racist conduct within the police across a number of stations in the Northern Territory, especially in Alice Springs at the relevant time and it has continued.

What's more, in our submission, this is not a real failure of leadership within the NT Police, the racism has been deeply rooted within the institution by the Northern Territory Police.

Just considering (inaudible) related issues we accept that the best evidence is that the non (inaudible) clinic staff at Yuendumu did not (inaudible) be in control of Yuendumu. It's still important to come to grips with the full picture of how those staff conducted themselves in relation to the community and the local staff.

NAAJA's submissions, in particular, are community-led and community-preferred solutions rather than mass incarceration. Some of the submissions today have focused on (inaudible) Royal Commission. I was going to say forget about that and won't duplicate what's been said or echo what's been said.

But in large measure the recommendations of the Black Deaths in Custody Royal Commission may well, if implemented, have led to a completely different future not just for Kumanjayi but for Aboriginal people in Central Australia, the Northern Territory and throughout Australia.

The ongoing impacts of colonisation and failures of the Northern Territory government to reckon with them also contributed to what we've submitted is an overcriminalisation of Aboriginal people in the Northern Territory.

As your Honour said on Monday in the other very important inquest, the Northern Territory's got the highest imprisonment rate in Australia. Very high. It's there significant as an issue in the Northern Territory than anywhere else in Australia.

And the Northern Territory has one of the highest per capita prison populations in the world. That's more overincarceration of people in the Northern Territory as many more people have died in custody than ought to have.

Since 1991 there's been at least 38 people, Aboriginal people, who have died in custody, in police custody. And there's been 43 Aboriginal people who have died in Northern Territory prisons.

Even since Kumanjayi died there's been about 75 other Aboriginal people that have died in custody nationally. This is a national crisis but it is not recognised as such by the systems of government.

Hyperincarceration is due to both historical and structural conditions and naturally relates to social and economic marginalisation. But also to structural and systemic racism.

And in considering this concept of racism it is important that there is not simply one type of racism. Individuals can, of course, be racist and there is very good evidence that Zachary Rolfe was racist.

There are very good reason to believe that the vast majority of police and have been a prisoner in the Northern Territory are not racist. But they are consciously racist. They're not individually racist.

Can I commend to you and reiterate our written submissions that there is a different type of racism which has indirectly contributed causing to the process of enabling incarceration in the Northern Territory and impacted on Kumanjayi's life.

Institutional racism is described in the Stephen Lawrence inquiry there is a collective phobia of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. And it can be detected in process, attitudes and behaviour.

It should not to discrimination through admitting prejudice, through ignorance, thoughtlessness and racist stereotyping that disadvantages minority ethnic people. It goes beyond individual biases. Our expert report picked up and agreed with that definition.

In many respects it is time for there to be a marking, an official marking of this factor, this insidious factor, in the life of the justice – criminal justice system in the Northern Territory, NAAJA strongly urges your Honour to find that there are factors, structural racism in play in the lead up to the terrible outcome of Kumanjayi's interaction with the police on 9 November.

So I see the (inaudible) to my colleague (inaudible).

THE CORONER: Mr Espie.

MR ESPIE: Your Honour, Mr Boulten's given some definition of racism in relation to that report. On face value, your Honour, there is clear examples of undisputed racism littered throughout the evidence of this inquest. I've read racism, one would think is easy to understand, perhaps – a bit easier, your Honour. But your Honour has provided – your Honour, we have – NAAJA has provided definitions of racism, including systematic and structural racism.

They can be difficult to understand, your Honour. But it is important to understand those differences and what they mean in light of all the evidence. I'm not going to read them out, your Honour, but we would urge your Honour to read them a number of times, continue to read them, your Honour, and adopt those definitions, and then weigh them up in consideration of the evidence, in consideration of NAAJA's submissions, and all parties' submissions.

"I was deceived by my colleagues." Those were the words of Derek Williams, ACPO Derek Williams, a member of the Northern Territory Police. Officers of high rank have given evidence and stand by their strategic decision to deceive their fellow officer, because he was a Walpiri man. Because they could not trust one Walpiri man post shooting. This was what their professional experience told them, your Honour, that there was absolutely no Aboriginal person, even one of their own, that could be trusted. But no-one believed that was racist.

No-one gave evidence, accepted that that was racist. It was just an unfortunate operational decision that had to be made. That's either because they choose to

deny it in the face of saving face in public confidence, or they simply don't understand that it was racist. Which again, your Honour, is why I say in consideration of these definitions, the difficult tasks needs to occur, of adopting and considering all the evidence, your Honour.

There are clear evidence – there is clear evidence of systemic racism. Whilst the – pages and pages of text messages are definitely overt racism, systemic and structural racism is evident when a sergeant, Sergeant Kirkby and Constable Rolfe conversing about work related matters in racist ways. It's a systemic issue that that's just accepted and it's not a problem that neither one thought there was an issue with that.

Not consulting with ACPO Williams in the arrest planning. The person who knew his community, knew his people, lived there longer than anyone else and had previously arrested successfully the suspect through a slowly and respectfully approach.

Further, not, as I've said, your Honour, shutting him out of the decisions post shooting. He should have been the first person that they spoke to, your Honour. It should have been "We need to get Derek. We need to talk about who else in the community we talk to about this."

Introducing yourselves as police in the community by jumping over the fence and storming into homes, carrying long armed weapons, pursuing the so-called imminent threat as if police were behind enemy lines, rather than the homes of civilian Territorians, your Honour. The bush cop mythology that if you kill an Aboriginal person you've got to barricade yourself – barricade all the white people in the police station and prepare for a siege.

Rather than reaching out urgently to community Elders and leaders and telling them what's happened and helping to control the situation and spread that information. That's not what happened, your Honour. Instead, the situation got worse. People were left in the dark, literally in the dark outside, not knowing what's going on, continually getting frustrated.

But your Honour, rather than what counsel assisting said, we would suggest that there's evidence of structural and systemic racism that this was the approach. And it is – there's clear evidence from Samara Fernandez's phone that what was going on outside. Other examples, your Honour, the whole ruse, the whole commandeering of the ambulance and getting nurses to assist in gathering reinforcements, all the while, deceiving the whole community into thinking that the young man is being conveyed by Flying Doctors to get medical help. And all the while, speeding – in high speed through the community.

Further examples, your Honour, in the days after the shooting, police continued to act on this bush cop folklore of, you know, assuming there's danger. Walking around in riot gear, carrying long arm weapons, as if it was the community that was the actual threat.

Your Honour, all we've seen and heard in these proceedings, if it's not racism, then it's hard to know what racism is. There's an urgent need, your Honour, to make findings that there is systemic and structural racism. And there's also an urgent need to make recommendations about both cultural competency training, extensive cultural training, as well as anti-racism training.

And I would say, your Honour, those two are related but separate things. Cultural awareness is not believing that all Walpiri people are prone to violence. It's understanding things like ceremonial and cultural practices relating to death and funerals are different than western processes. It's understanding kinship structures and the fact that a kinship uncle might be ae useful authority figure that can help to peacefully allow – to help the suspect peacefully comply with police directions.

Two days training is not enough for that, your Honour. And furthermore, it's not just that on its own. It is the full anti-racism strategy that's needed. An example of Officer Mitch Hansen, who grew up in Groote Eylandt. He grew up with Aboriginal people, yet still succumbed to issues of racism.

Your Honour, I think I'm about to ask to leave. Your Honour, just very briefly, your Honour also – we recommend the co-designing of a collaborative community policing model where officers can learn, rather than simply hope to be paired up with seasoned cops like Michael Schumacher(?) or Lindsay Greatorex(?) who've given evidence. They can't just wing it and hope they're going to learn those skills, your Honour.

And I just finally say, Constable Rolfe gave very detailed evidence, demonstrated his knowledge of his training and police procedures. Imagine a situation where just as he valued those procedures, your Honour, he valued things like community policing. And that was championed. He valued the notion of working with the community and being anti-racist. Imagine what the outcome would be like, your Honour.

THE CORONER: Thank you.

Ms Mishra.

MS MISHRA: Your Honour, excessive use of force by police officers against Aboriginal people in the Northern Territory has been an issue that has plagued case law enquiries and inquests for many years now. Regrettably, 33 years on from the 1991 Royal Commission into Aboriginal deaths in custody, which made recommendations relating to use of force and safe arrests of Aboriginal people, this continues to be a major and unresolved issue.

Your Honour, in light of the evidence before you, we ask you to find that there is a prevailing culture of excessive use of force and non-trauma informed conduct in the Northern Territory Police. And that Mr Rolfe was a part of this culture. Mr Rolfe was an officer with a propensity to use excessive force, particularly towards

Aboriginal people. And we ask your Honour to find that this was affected by his racist attitudes.

Keeping this background of Mr Rolfe's tendency to use excessive force against Aboriginal people in mind, we ask your Honour to find that the ultimate cause of Kumanjayi's Walker's death was Mr Rolfe's use of excessive force in shooting him three times, informed by his interpersonal racism or unconscious bias and structural racism.

On the basis of these findings, your Honour, we ask that you recommend the introduction of well-funded community policing, trauma informed policing and a safety matrix for affecting safe arrests to the Northern Territory Police force.

Your Honour, turning to the culture of excessive use of force in the Northern Territory Police.

The evidence of current and former members of the force bespeaks the prevalence of the use of excessive force and non-trauma informed policing. Also telling is the loose and unregulated manner in which the IRT was formed, trained and operating with structures that awarded officers who approached their duties with impunity, such as Mr Rolfe, and permitted them to be deployed in high-risk operations.

Your Honour, although the IRT is now disbanded, its formation and operations serve as an important lesson. That lesson being that there is an appetite for a tough cop approach and paramilitary style policing - a warrior style as opposed to a guardian style in the Northern Territory. Policing which causes apprehension in citizens and that is designed to make citizens fearful of consequences. Not of arrest but of death or serious harm.

To Aboriginal people this continues a post-colonial historical environment of police-led massacres sitting right in the heart of policing.

Your Honour, Mr Rolfe, who was a member of the IRT, was part of this culture of excessive use of force. As the multiple use of force incidents involving Mr Rolfe examined over the course of this inquest demonstrate, Mr Rolfe had a tendency to use excessive force. He wanted to - and I quote, "get his man" to use Senior Sergeant Andrew Barram's terms, at all costs during arrests and to express his dominance over Aboriginal men through the use of force, deriving amusement from these uses of force.

It is also clear from the evidence, your Honour, that Mr Rolfe experienced exaggerated threat perception when interacting with Aboriginal people in the positive duties. This is clearly illustrated in his interactions with Malcolm Ryder and Albert Bailey in which Mr Rolfe acted completely disproportionately.

Your Honour, the abundance of evidence substantiating that Mr Rolfe is a racist. Mr Rolfe's established tendency to use excessive force and his exaggerate threat

perception when interacting with Aboriginal people together allow for your Honour t o make a finding that Mr Rolfe's use of force against Kumanjayi Walker which ultimately caused hi death, was informed by racism.

Kumanjayi Walker's Aboriginality served as an othering experience for Mr Rolfe. Mr Rolfe perceived Kumanjayi as different to him - not as worthy of him or his colleagues on that night and that is why he went out looking for him - flouting Sergeant Frost's arrest plan and used excessive force in getting closer to him than necessary, backing him up against a wall and shooting him three times.

Your Honour the evidence that - the racism that informed the use of force which let to Kumanjayi Walker's death was not limited to Mr Rolfe's interpersonal reasons and/or unconscious bias. It was also due to structural racism and loopholes in current Northern Territory Police Use of Force policies and training.

Current Northern Territory Police policies and training do not equip police officers with the necessary knowledge and skills to be able to conduct themselves in a trauma-informed and culturally safe manner, particularly when planning and executing use of force and when confronted with dangerous situations in which split second decision making and almost immediate or automatic reactions are required.

Training such as the two-day AMSANT culturally response trauma informed care module and FASD training mentioned in the Northern Territory Police submissions, although well intentioned and necessary, lacked a requisite level of detail and are unable to capture the wealth of knowledge and skills involved in trauma informed and culturally safe policing in dangerous and high pressure situations.

Cultural competence and trauma informed practice in the context of use of force should not be relocated to formal, once off or even annual training. Effective integration of these concepts requires engagement in consistent, dynamic applied training where feedback is given and superior officers are alive to the issues and point them out, not necessarily as part of any formal disciplinary process but as a part of an ethos - a commitment to ideals and a form of policing that isn't currently systemic in the Northern Territory.

At the Australian Centre for Police Research Guidelines, which Senior Sergeant Barram described as a "motherhood document" from which all police jurisdictions derive their policies, effective training must incorporate realistic exercise. Therefore, your Honour, NAAJA supports the recommendation of both the implementation of community policing and trauma informed policing - including the development of a safety matrix for safe arrests by the Northern Territory Police Force, a system where community-led solutions are prioritised and Aboriginal police officers take the lead and are supported by non-indigenous members.

The evidence of ACPOs and the Community Policing panels clearly demonstrates that community policing is a safer option for remote Aboriginal communities. We ask that your recommendation place an emphasis on the proper funding of community policing. Aboriginal leaders in remote communities have a

range of responsibilities thrust on them by government are often not adequately supported. People are fulfilling multiple roles and it leads to burn-out.

Just as members of local councils are remunerated for their attendance at meetings, Aboriginal leaders and community leaders that are asked to provide important insights into something so fundamental as police work should be paid just as much as the police and other department staff are.

Your Honour, those are my submissions and I hand over to my colleague, Mr Derrig who will speak on police accountability and health.

THE CORONER: Mr Derrig.

MR DERRIG: Thank you.

By 9 November 2019 Mr Rolfe had already been found to have lied to the local court and his use of excessive force caused physical injuries to Mr Ryder. He had 12 complaints for excessive force, four of which led to medical treatment of the arrestees.

In a proper functioning accountability system these uses of force like that against Mr Albert Bailey in the Araluen Park residence of Todd (inaudible) incident and Malcolm Ryder incident as well as the judicial finding of lying to a court should have led to suspensions pending further investigation in the least, if not fired. All of these were clearly evident and available at the time of the shooting, allowing for a proper basis for suspension.

Out of all the incidents of misconduct seen in this inquest, only remedial advices were given. Police Standards Command did take disciplinary action in one instance involving an Aboriginal woman who was photographed topless by an officer, who had blood across her test. This was sent to a group chat as a joke. The PSC correctly demoted him and were going to transfer him to Katherine. The decision was overturned by the Commissioner and all of a sudden an openly unrepentant officer was transferred to Darwin where he wanted to be transferred to and was able to keep his rank.

These failure are systemic egregious, current and show that the accountability system is utterly and undeniably broken.

The solution, however, comes from the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Those recommendations were specifically designed to make sure that Aboriginal people did not die within custody, but inexplicably it was not implemented in the Northern Territory.

The important features of those recommendations are that our system would be totally independent from police, complaint outcomes would be sent to parliament with Aboriginal complainants, one of the persons doing the determination should be Aboriginal, and the investigating staff should include Aboriginal people.

There is also the internationally recognised best practice model of the Police Ombudsman of the Northern Island which is investigating the service for all issues relating to complaints, discipline and charging of police. Both the recommendations and the pony(?) as it's called, conform to the expert opinion of Dr Hopkins' view of best practice, which is that it is independent, adequate, prompt, transparent and (inaudible).

Our recommendation is that Aboriginal experts should consider these recommendations in pony and tailor-make what is a meaningful and appropriate system in the context of the Northern Territory.

Now, turning to health, an important and understated piece of evidence in this Inquest is the medical opinion of Dr Reid who had the opinion that Kumanjayi Walker could have survived his injuries, had the clinic been operating and had the Royal Flying Doctor Service come to Yuendumu.

His oral evidence in the criminal proceedings provides that while Dr Reid did not know the precise skills of the staff or the precise skills of the precise equipment at Yuendumu, he opines there would have been some interventions that could have bee performed, and others that could not have.

But on balance, Kumanjayi Walker could have been maintained long enough to be evacuated and could have survived. This not only means that Kumanjayi Walker's medical care is therefore within the scope of this Inquest, but it means that we have to grabble with the real-life implications that Kumanjayi Walker's life could have been saved.

These are extremely important issues to consider outside the questions we might otherwise have for police. When NT Health withdrew their services, they did this on the basis of the concern for the safety of their staff.

There was risk to the clinical staff, but was their decision a response to a sober consideration of the circumstances in Yuendumu at the time? Was their decision to withdraw proportionate? Did that decision consider the risks to the community members? Was the planning properly done in order to mitigate risk? Was there a consideration of the increased risk to the Yuendumu Community, given that their nurses may not be present during the night?

Answers to all these questions is, "No". Our submission is that institutional racism infected this decision. We say this because there was an overestimation of the actual risk to the clinical staff predicted on the view that Yuendumu was an inherently violent place.

There was no consideration of the medical risks of the patients in Yuendumu or Yulamu, meaning that the medical needs of the community was not even balanced against the safety of the nurses. The Warlpiri clinical staff were marginalised

through not being invited to be part of the discussions that led to withdrawal and not was their safety considered.

There were some views of the clinical staff that a message needed to be sent to the community so they would learn that nurses needed to be safe, suggesting that the community was collectively responsible for the actions of a few.

And despite there being no known safety concerns in Yuendumu, none of the nurses agreed to be able to go to Yulamu to service the - Yuendumu on an emergency basis. These failings cannot be explained through the concern of the safety of the clinical staff. This is something beyond that and we say it's evidence of structural institutional racism.

Now, turning to the Royal Flying Doctors Service, they decided not to fly to Yuendumu because of the concerns for their assets and their staff. They have stated it was because the police told them to do that because it was unsafe. But this is contradicted by three police officers' evidence including Senior Sergeant Zhang and Superintendent Nobbs.

The Royal Flying Doctor Service's concern was basely, other than being based on the fact - on the perception that remote communities are inherently dangerous places. Therefore their decision was also influenced by institutional racism.

The solution to this issue is to allow for community control over clinics. Withdrawals might still occur, and in fact in the case of Congress, when they had to withdraw from Mutitjulu in 2021, they had to do so, and they were upfront in their evidence about that.

But their handling of this incident was superior, as they had pre-existing policies recognising that withdrawal should not be a punitive measure; violence is of an individual behaviour or a small group and not the whole community, and there is need for proper consultation.

When they did shut down the Mutitjulu Clinic, they still provided emergency services, including 36 call outs from Yulamu, even though all the other service providers were shut. They withdrew in objectively more serious circumstances. Their decision was made in conjunction with the local health board, which means community members engaged in this decision-making.

And they also, initially from the start, planned to get a security guard in order to reopen as soon as possible. They also did post-incident advocacy with the police and through their Men's Group with the community to make sure that they would not be in a similar situation again.

A benefit of Aboriginal-controlled organisations are that they can access primary health care access programs allowing more funding from the Commonwealth. That meant in the past, such an organisation in Yuendumu, in fact, two GPs, two mental

health counsellors who were based in Yuendumu are hearing health worker and maternity and children's coordinator.

Most important of all, Aboriginal control organisations and health is something that's trusted by the community. NT Health's own policy pathways to community control provides that they believe that great levels of community involvement brings benefit to the process of health and family service delivery and to the health of those engaged.

NT Health already have a policy that should transition them to community-controlled organisations. The only thing is that we say that this policy has been around since 2009 and transition needs to happen immediately. And I will now hand over to Dr Murphy to conclude.

THE CORONER: Thank you, Mr Murphy.

MR MURPHY: Your Honour, I want to reflect on two topics to finish, and I hope to finish the end of my submissions on an optimistic note. The two topics will be, first what I'll call the "Inquiry mentality", and an invitation to your Honour to grapple with that in a way that's almost impossible not to, because of the number of times it's been mentioned. And the second topic will be "Community resolutions".

On the first topic, your Honour, if I may read out three recommendations, that police services take all possible steps to eliminate the use of racist or offensive language.

1. When such conduct is found to have occurred, it should be treated as a serious breach of discipline.
2. That all police services review their use of paramilitary forces to ensure that there's no avoidable use of such units in circumstances affecting Aboriginal communities.
3. That police services introduce procedures in consultation with appropriate Aboriginal organisations whereby negotiation will take place at the local level between Aboriginal communities and police concerning police activities affecting such communities, and the methods of police are used in those communities.

Your Honour could cut and copy those recommendations that I've read verbatim from the 1991 Royal Commission into Aboriginal deaths in custody. It is impossible not to feel a sense of dismay at the continuing relevance of them. We've identified more than 27 recommendations at the Royal Commission and in our submission, they're directly upon this inquest and this death.

We've identified 12 other inquests of this court that contain recommendations and findings directly relevant to this death. And we and the other parties have cited to the Don Dale Royal Commission interstate inquiries, annulments reports and the like.

It cannot be denied that there is a cycle by which an Aboriginal person dies in custody. There is an investigation. Recommendations are made. Those recommendations are not acted upon and the cycle continues. Nick Gouda(?), one of the Don Dale Royal Commissioners called this an Inquiry mentality, and he said that we need to confront it and avoid a situation where investigation and recommendations are allowed to be substitute for action.

And of course, your Honour is limited in what you can do. But NAAJA's submissions, and indeed that of many other parties of this Inquest, have been focussed on trying to put before your Honour evidence and suggest recommendations to your Honour that are geared towards enduring change and that are framed in a way to address root causes such that they cannot be ignored.

In NAAJA's submission, this Inquest does present an opportunity to break out of this Inquiry mentality and the cycle that comes with it, and it presents that opportunity perhaps unprecedented in the history of this court because of the unique body of evidence that the court has heard from written and oral evidence from community members and a visit to Yuendumu, very detailed evidence about Kumanjayi Walker, the deceased, and also Mr Rolfe, the person who killed him.

And a huge body of varied expert evidence from such very disciplines as use of force, history, anthropology, Aboriginal peacemakers, police accountability experts, Aboriginal Elders, of course, Aboriginal police officers and Aboriginal healthcare providers.

Your Honour also has what, in our submission, with respect, is potentially an unprecedented level of participation, and we hope assistance, from all of the various parties. And so, in our submission, this inquest really does present that opportunity to get to the truth, and in particular, get to the truth of the root causes of Kumanjayi Walker's death.

And these are and cannot be denied to be systemic and structural issues. And yes, in our submission, they include racism. And Nick Espie admitted to say something and will not let me sit down unless I say it. And it's this. That racism seems to be a sensitive and sometimes forbidden word. Nobody else will say it, except your Honour. They need you to say it, because they can't.

They need the findings and recommendations of this inquest to say it for them, to help them so that they can then address it. And in our submission, that really fits squarely with the recommendations of the Aboriginal deaths in custody report which acknowledged that the death in custody has to be seen in its broader historical context.

And as your Honour knows, the Act which empowers your Honour was borne out of that inquest. It is the foundation of this statute and your Honour's powers. Some other parties would have your Honour ignore these issues. They are too remote, they say. They are out of scope. NAAJA categorically rejects those submissions. They

are ahistorical and they do an injustice and disservice and a disrespect to the institution of the *Coroners Act* and this court, with respect.

As your Honour knows, one of the powers on your Honour is framed as an obligation. The court must make recommendations to avoid similar deaths in the future. And it's on that basis that those assisting your Honour and the parties and it's hoped NAAJA, has put before the court evidence of potential solutions to the problems that this court's heard about, and in NAAJA's submission, the most promising of those are community led solutions.

It's hardly surprising, in NAAJA's submission, that the Aboriginal community and the ideas that they have present the best chance of success of avoiding a similar death like this in the future. For as long as Aboriginal people have been coming into contact with the criminal legal system, they have been thinking of ways to reduce that contact and to make that contact safer.

And your Honour's heard of some of the success and the programs that have achieved that for a time for Kumanjayi, and counsel assisting has already referred to the most important of those, Mount Theo and SevGen, Seven Generations. But your Honour's also heard and of course knows from your Honour's long practice, of the obstacles and barriers to the availability of many such programs, the establishment of them and the ongoing funding of them.

And some of them weren't able to be accessed by Kumanjayi Walker or re-accessed by him when he needed them most. But there are community led solutions that your Honour's heard about, that in NAAJA's submission, are directly relevant to some of the issues that this inquest heard about. And the evidence is rich and your Honour's – it's before your Honour, I won't repeat it.

But some of those solutions are the group Archipelago Peacemakers; the Mirrilingki On Country Drug and Alcohol Program; the Lajamanu Kirdiji Law and Justice Group; the various models of community policing that your Honour's heard about; night patrols; and of course, Congress and Aboriginal led health service delivery.

NAAJA commends that evidence to your Honour and the spirit in which it was put before this court. It's submitted that these type of programs offer the most promise of lasting change. And - or with respect, with a focus of your Honour's, submissions and recommendations. NAAJA's ultimate submission is that Aboriginal people have answers to the problems that this inquest is heard about and NAAJA asks the court to listen to those suggestions.

THE CORONER: Thank you, Dr Murphy. Should we take a five-minute break, just to give you a chance to have people sort of survive another hour or so – or so. We'll just take a very short break, about five minutes and then we'll resume.

ADJOURNED

RESUMED

THE CORONER: Can I thank everyone for being very considerate to each other and very much sticking to the time limits that were allocated for submission.

Mr Officer, I understand that you have asked for approximately an extra 15 minutes and I am happy to accommodate that and we will sit through this afternoon so that you can have that additional time.

MR OFFICER: Thank you, your Honour. And, your Honour, I hope you don't think less of my sartorial elegance for not wearing a blazer. I haven't been able to get home from Darwin for some time to obtain a suit, so I am in true Territory rig.

Your Honour, I intend to deal with my submissions, which is obvious from the way in which they have been put in writing, in two parts and that is, your Honour, scope firstly and secondly, 9 November 2019 including responsive to what some parties have put to your Honour today.

As we have said, now that we have reached this stage - or your Honour has reached this stage in this inquest, with respect of course, we say that it started on erroneous entry basis. It was beyond scope and it exceeded jurisdiction. We maintain that position and I will elaborate shortly on why it is appropriate that we raise it again at this juncture.

Your Honour, it is now time, at this stage, we say, to appropriately and properly confine this process in your investigation come the time of exercising your statutory power and functions. Confine it in its scope, confine it to what is relevant and confine it so as not to undermine a jury verdict or infringe upon the prohibition set out in s 34(3) so that you exercise your statutory powers and functions within the proper limits.

Your Honour, for if you accept what others are urging upon you in some - not all - issues, with respect we submit you will fall into error. Where we part ways with others on the controversial issues which are obvious from the submissions and how the inquest has been conducted, what others are urging on you to do you must not for it will cut across the sanctity of the jury verdict and in our respectful submission, lead you to act in prohibition of s 34(3) that is making findings or comments that an offence may or has been committed.

Your Honour, what parties are urging you to do with respect of those controversial issues, if accepted will in truth, give it the hallmarks of a Royal Commission into Zachary Rolfe, seeking to try and alter the outcome and in our respectful submission, your Honour, you cannot do that.

Your Honour, some criticism has been levelled at us from NAAJA that this is a re-agitation of litigation of matters already decided upon and whilst you don't need to decide the concepts of abuse of process, it is inherent that that is what they are suggesting, your Honour, there is nothing, I submit, inappropriate about pointing to

potential error at this stage because it's now about use of evidence. You've decided to receive it, it's now what use you can make of it and for what purpose and purpose which I will outline in these submissions looks large, your Honour.

As the cases say, to take judicial review or some other challenge to evidentiary rulings at the commencement or during and investigation is premature. That fails at par 67 and *WRB Transport v Chivell* where similar challenges to the receipt of evidence were taken and the higher jurisdiction suggested that that was premature.

So, your Honour, there is nothing in appropriate about going back to the receipt of evidence and what you can do with it now and on that basis I advance the following two propositions with some overlap.

Your Honour, I will deal with what I characterise as the errors from the outset, that's by reference to rulings 2 and 3 and the errors you risk running into and the way I characterise that, your Honour, is by following the bouncing ball to determine liability and what I meant by "purpose" earlier, your Honour, is what is the purpose for which you receive the evidence? What is the purpose you can make use of that evidence and what is the purpose the other parties are urging you to do with that evidence where we suggest, your Honour, may lead you to error.

As your Honour is well versed in the authorities, having them being canvassed in this inquest to date on these arguments, what permeates the vast majority of those is that yes, they are broad, that is Coronial enquiries are broad but has, as it's boundaries, commo sense. Common sense when you are determining the factual inquiry as to what led to the cause of death common sense as to what circumstances can reasonably be enquired into to determine a cause of death and, your Honour, to that end I commend to you par 28 of our paragraphs which is reference to *WRB Transport and Chivell* and what Lander J was doing there was espousing that cause and circumstance are two different things, cause being the legal cause, that is a question of fact which, like causation in the common law, must be determined by applying common sense. The Coroner therefore has to carry out an inquiry into the facts surrounding the death of a deceased to determine what, as a matter of common sense, as being the cause.

And near the end of that paragraph that is a factual inquiry which only has as it's bounds, common sense.

He then goes on to deal with circumstances, your Honour, which he adds as an additional jurisdiction to your Honour, and we agree with that. And the jurisdiction is to determine the cause of the death of the deceased. There may be some circumstances surrounding the death of the deceased which although not operating directly as a cause of the death of the deceased, are relevant for the Coroner's inquiry.

The circumstance surrounding the death of the deceased may be important for the purpose of the Coroner adding to his or her findings, recommendations which might prevent or reduce the likelihood of a death and, your Honour, as we indicate in

our submissions at 29, what we submit Lander J was really getting at there was albeit a cause of death and circumstances relevant to a death are separate in their concepts.

The circumstances of a death must be tethered to making recommendations to avoid reoccurrence of the death. It is not some continually broad-ranging inquiry and indeed, the language between s 34 and s 26 of your Act - the Coroner's Act - that is tend to suggest that our submission is on all fours with that because s 26(2) says:

> "The Coroner must make such recommendations with respect to the prevention of future deaths in similar circumstances as the Coroner considers to be relevant."

And s 34, your Honour:

> "The Coroner must investigating a death must find any relevant circumstances concerning the death."

So my respectful submission, your Honour, the fact that you must find circumstances concerning the death, does not give the broad range on enquiry.

Can I turn to your Act, your Honour, the *Coroners Act*. And what gives you jurisdiction to investigate a death, finds itself in s 14. Your Honour then has jurisdiction to hold an inquest under s 15. And your Honour, stating the obvious, but it's what the authorities say, without a death you have no jurisdiction. Section 26(1)(b) is a power. That is a power to report on a matter in relation to the administration of justice. Crucially, your Honour, that is relevant to the death. Section 26(2) imposes on you a duty. That is, a duty to make recommendations to prevent death in similar circumstances.

And so there's a delineation, your Honour, between must and may. That is, duty as opposed to power. Under s 34, "The Coroner must", and here we find another duty, "find the cause of death." Your Honour also a duty to find any, once again crucial words, relevant circumstance concerning the death. And as Nyland J said in *Perre v Chivell* at par 54 "It's a Coroner's statutory duty to find facts." Section 34(2), your Honour is a power. That is a power to comment on a matter in relation to the administration of justice connected with the death.

Section 34(3) is a duty. That is, you must not include in any finding or comment a statement that a person is, or may be guilty of an offence. Section 35(2), your Honour, is a power. That is a power to make recommendations in relation to the administration of justice. Once again, connected with death. And your Honour, I just want to pause to explain why I emphasise the fact that connected with a death has significance to this argument. In Phails(?), your Honour, at par 71 through to 73. There was an argument put in that case that because the Coroner had made a finding, that is a factual finding, that they were unable to determine the death or unable to make a finding of, in that case, electrocution. That therefore meant the

Coroner could not go on to exercise the powers. That is, to make comment or recommendations.

But that was rejected. And it was rejected for this basis. "There may be cases where the cause of death is uncertain, but that the circumstances in which the death occurred give rise to significant and substantial matters relating to public health and safety or the administration of justice. Neither the text of s 67 of the *Coroners Act*", so your Honour that s 67 is very similar to s 34, "when read as a whole, limit the power of the Coroner to comment on such matters provided they are connected with the death which is being investigated." In that case, your Honour, the words "connected with the death," relevant to the death, or relating to the death, did not feature in that particular provision.

And so the Supreme Court rejected an argument that you couldn't then go on to make findings. They went on to say:

> "It's hypothetical to consider whether the calling of a particular witness, or particular evidence, might infringe on the prohibition on not enquiring for the sole or dominant reason of making comment or recommendation."

And your Honour, that authority comes from Harmsworth. And your Honour would be familiar with *Harmsworth*, where in that case, Nathan J said this. Starting at page 995.

> "The Coroner's source of power of investigation rise from the particular death or fire. A Coroner does not have general powers of enquiry or detection. The inquiry must be relevant, in the legal sense to the death or fire, that brings into focus the concept of remoteness."

And then he goes on to explain of course if there wasn't a fire in the prison there wouldn't have been a death, etcetera, etcetera. Such an inquest would never end. But worse, it could never arrive at a coherent, let alone concise findings required by the Act which are the cause of death. Such an inquest could certainly provide material for much comment. Such discursive investigations are not envisaged, nor empowered by the Act they are not within jurisdictional power. Enquiries must be directed to specific ends. That is, the making of findings, as required, and set out in s 19." That is, your Honour, findings of fact.

The power to comment. Provided as a consequence of the obligation to make findings. It is not free-ranging. It must be a comment on matter - any matter connected with the death. The powers to comment and also to make recommendations are inextricably connected with, but not independent of the power to enquire into a death for the purpose of making findings. They are not separate or distinct sources of power enabling the Coroner to enquire for the sole or dominant reason of making comment or recommendations. It arises as a consequence of the exercise of a Coroner's prime function. That is, to make findings.

The extensive powers of investigation and inquiry which I have already noted, attached to the purpose of making the findings which the Coroner must, if possible, do. And then later on, your Honour, the words "to investigate" was explained as a verb, which is used in its ordinary plain English way. But that does not expand or illuminate the concept of relevance or causation. But the power to comment is incidental. And subordinate to the mandatory (inaudible) relating to how deaths occurred, their causes, and the identify of any contributory persons. Your Honour, you can't just ignore the Act, in my respectful submission.

Even if was borne out of the Royal Commission as NAAJA just said, arguing it's parameters has nothing to do with showing disrespect to the Act. This is set in a particularly structured way for the reasons I have outlined. And I want to take you to your rulings, number two and number three, as to why we make good the submission that there was an error from the start, hoping to raise it at this stage. In ruling number two at par 18, dealing with the evidence on Mr Rolfe's phone, you said this. "In my view the evidence should be received." And there was an argument your Honour might recall about the lawful interrogation.

"In addition", and you received it under s 39, "I consider the evidence is appropriately directed to, and capable of bearing upon, the issue of what, if any, finding or recommendation I should or must make under s 26(1), (2) and 34 of the *Coroners Act*." Your Honour then went on at par 33. "I would have exercised the discretion to receive the evidence", again, this is the mobile phone evidence, "in light of the subject matter, and potential significance to the question of what, if any, findings, comments, recommendations I should or must make, under s 26, 34 and 35 of the Act." In dealing with remoteness, your Honour said:

> "For present purposes, it is unnecessary and appropriate for me to characterise the text messages. The question is whether it is appropriate to receive them under s 39 for the purpose of investigating the death, and ultimately, for the purposes of determining whether, and if so, in what terms I may or must make a finding or recommendation under s 26."

And so on you go.

And say you would not have investigated the matter if there was no evidentiary basis about Rolfe indicating racist views. You then say at par 37:

> "I am satisfied that this could amount to a relevant circumstance connected with the death, or a matter connected with public health or safety or the administration of justice that is relevant to the death, or thereupon, the prevention of future deaths in similar circumstances."

Your Honour, in ruling number three, and I won't go through all of them given the time limits, but it's where you dealt with in much more detail the objections to receipt of particular types of evidence.

And at par 49, you rely on essentially the same reasons you gave in ruling number two, or rejection. And once again, your Honour, you go down the path of admitting the evidence by virtue of s 39, but linking that, because it may be relevant to the matters of ss 26, 34 and 35. Your Honour, what I submit in that respect, and with respect, is that there was a conflation between your statutory duty to make factual findings, and then your discretionary power to make comment or recommendations that followed from that. And your Honour, that is what we say belies the error in when the evidence was received at first blush.

Your Honour, there's a reason why that is also important, and why again, we can raise this, or bring this to your Honour's attention now, and that is because of what Lander J in Chivell, *WRB Transport v Chivell*. In due course, bearing in mind, he said the objections and the argument for judicial review was premature. "Some of the evidence may become irrelevant. Other evidence, yet undiscovered, may become relevant. The Coroner will determine that at the time of reception of the evidence. Some evidence which has been received, in due course may be ignored. Some may become clearly wrong. Other evidence will be unreliable, and some irrelevant. But that will be a matter for the Coroner at the time he makes his findings."

And your Honour, because of what we respectfully submit the conflation on which you received the evidence, because your statutory function is to make findings of fact, the receipt of the evidence at first instance was in error because we respectfully submit you considered what you may do with it in terms of commenting recommendations when it has to be received, your Honour, at first instance, to make findings of fact as to cause of death.

Not whether something might be reliable or could be relied upon later to pass comment or to make a recommendation, it must first be absolutely tethered being relevant to cause of death. And your Honour, can I say this about relevance which came up in the Territory Coroner, *Rolfe v The Territory Coroner* & Ors [2023] NTCA 8 at par 47:

> In the performance of that function, Coroners exercise wide investigative powers and where necessary conduct inquests to receive evidence before recording findings and comments. In the conduct that inquests the inquisitorial aspect is maintained by the fact that Coroners are generally not bound to observe the rules of procedure and evidence which apply in courts and record, however, it is now well-recognised that Coroners must act judicially in the use made of evidence of low probative value or other probably value that cannot be properly evaluated without applying the relevant rules of evidence.

And the court went on to say at par 52:

> The requirement to act judicially is not only to carry out the decision-making function rationally and reasonably, rather than arbitrarily.

And your Honour, the issue of relevance came up in the *Commissioner of Police v Flemens(?)* which I think was cited by NAAJA to say, well you just have this broad range in discretion to determine what you think is relevant yourself. But your Honour, that misses the point. The touchstone, as your Honour - that's what that decision says.

And if it's not relevant to a cause of death, your Honour, in my respectful submission, it was an error to make it relevant by thinking it might help or assist in comments or recommendations that you might like later seek to do. Your Honour, in fact in *Serif v Johns(?)*, recommendations and comments can be invalid, and if they are, they're in excess of jurisdiction.

Your Honour, there is one other point which we - well, I respectfully submit makes foot the argument. Firstly, why as the Supreme Court authority has held, that you can't just admit evidence for the purposes of comment and recommendation.

And why this argument is not an abuse to raise it now, unlike other acts, and there's a case out of Queensland which was the *Hurley v Clements(?).* In this case in your Act, s 44 - and I don't mean this in any pejorative sense at all, your Honour, it says that:

> The Supreme Court may declare some or all findings of an inquest void and the Supreme Court may make an order under the section if it is satisfied that it is necessary because of consideration of evidence.

It is such a broad ability, your Honour, for there to be an error in the consideration of evidence necessary for the Supreme Court to set aside any finding. Unlike the case in *Hurley v Clements*, what they were dealing with there is, there had to be a finding against the evidence or against the weight of the evidence.

In my respectful submission, your Honour, this is much broader in that if you erroneously considered evidence and if you erroneously accepted it for the purpose of only making comment or recommendations at a later stage and not being relevant or tethered to the cause of death, then there is serious concern, your Honour, as to whether or not you can make use of that evidence at all, come your fact-finding process which you are now about to embark upon.

So that is, how can it be permissibly used and if it can be permissibly used. And your Honour, when you follow the bouncing ball, which I mentioned off the top, you can't use that evidence, in my respectful submission. Not only was it received in error, it's use would be in error, not only because it's irrelevant, but also because it infringes upon the practice under s 34(3). And again, your Honour, I remind you of the approach the courts take as to the common sense boundaries that apply in your fact-finding mission.

So your Honour, I want to turn to the submissions we make about a potential error your Honour might fall into, should you consider the evidence and the submissions that parties are urging from you, which we respectfully submit not only

cuts across the jury verdict of acquittal for Mr Rolfe, but also in s 34(3), that is the prohibition on making any comment consistent with an offence being committed.

Your Honour, in - and there is a myriad of them, but I want to deal with a select few, the parties' submissions to date. This is where we say, as attractive as it might be, your Honour, you run the risk of falling foul of those two issues that we raise, the verdict and the s 34(3) prohibition.

Your counsel assisting at par 562(c) says, "As a result of this lie", and this is the lie dealing with Kumanjayi Walker grabbing of the Glock which I will deal with later, "the lies Mr Rolfe told regarding the broader events of 9 November 2019 and the significant issues with his credibility as a historian of his own use of force, the Coroner could not accept, even on balance, Mr Rolfe's evidence that he feared for his own or Constable Eberl's life when he fatally shot Kumanjayi Walker.

Now, as your Honour heard today from your counsel assisting, there was an extrapolation of that that you might find he has this tendency to use excessive force, a tendency to act on violent or racial attitudes or predispositions.

NAAJA, your Honour, in their primary written submissions at par 42, take it to the extract, "If the good faith defence (inaudible) had been abolished, maybe the shooter would have been held to account for his actions and become the first police officer convicted of the death of an Aboriginal person in custody".

NAAJA, in their reply submissions at pars 47 to 52, in rebuttal to what we put about Burns J's decision on tendency, say well he was only dealing with four instances and you've received evidence, and I remind you of our position on whether or not that's in error, your Honour, of all of these tendencies.

And they lead to the ultimate conclusion that come 9 November 2019, all three shots were fired in excessive force. That is adopted by the Brown family at page 14 of their annexure to their reply submissions. NAAJA, today in their submissions, suggested that Kumanjayi Walker's death was by use of excessive force and had - my words because I missed them - but along the lines of racial predisposition.

And your Honour, the Walker/Lane/Robertson families, in their submissions, say:

> "Finally it also bears examination that no one has been prosecuted for the first shot following the unlaw entry and arrest attempt, nor (inaudible) criminal liabilities both as principal and as (inaudible) be investigated given he let Rolfe into the house. He used physical force and on it goes."

Your Honour, I remind you of what we said at par 91 of our submissions and why you must exercise absolute caution in being attracted to the bouncing ball position the parties are taking, and that is this, notwithstanding these contentions which are attempts to undermine the jury acquittal, the Coroner is expressly prohibited from making a finding of excessive force at all.

And in relation to the incident on 9 November 2019, not only prohibited from making a finding of excessive force, but also cannot make findings about Rolfe's state of mind and/or apply a legal standard to aspects of Rolfe's conduct and/or suggest that the conduct of Rolfe was unlawful.

This is so because the conduct and reasonableness of that conduct in relation to the three available defences relied upon by Rolfe formed part of the issues joined at trial. To make these findings is to go behind the sanctity of the jury verdict.

Your Honour, if I can perhaps do it this way by analogy, and with reference to the case of *Balloch(?)* in our submissions, which was an ICAC investigation where they ran a similar application that there shouldn't be any findings consistent with the statement that someone has committed an offence, which ultimately the Supreme Court held.

But that's different, because I captured in that particular case and as it stands as a statutory body, its very purpose is to investigate the exposed corruption, and if there is corruption, it's to make recommendations to the DPP that they think a crime has been committed.

In other words, if a developer comes along and hands $10,000 to the minister and says, "Give me a development approval", that is corruption. And that is their task, to find that and to weed it out.

But if, for example, in the Coronial context, let's say a body is found. A person has clearly been murdered. Let's just say for argument's sake, they're naked facedown stab wounds, it's then the Coroner's task, your statutory duty, to determine the cause of death and your statutory duty to determine the circumstances.

So first, you deal with causation. Was it a stab wound? You then turn to circumstances and that could include this. Where that person was last seen? Whom were they with? What did (inaudible)? What did their bank statement say? Who did they meet? Where did they go? And how did they end up at the place where they are now? You might get to a conclusion, your Honour, that the identity of the last person to see them was X. That's not this case.

We know Zach Rolfe shot Kumanjayi Walker three times. We know the second shot resulted in his death. We know that the lawful killing principles were (inaudible) trial self-defence could make defence a reasonable performance of duties.

I go back to what I reminded your Honour I would emphasise - purpose. What possible purpose is there in making findings of fact on use of force prior, text messages, state of mind and whether there is a tendency for any sort of proclivity, then applying a legal standard to those things other than to suggest that these other parties are urging upon you - including your counsel assisting - that an offence had been committed. What possible other purpose - bearing in mind the constraint. It would be a complete contravention of s 34(3) and, your Honour, we go so far as to say that it would undermine the jury verdict of acquittal.

We don't quarrel with the fact that your Honour can still investigate the same circumstances which were subject to a criminal trial, then you come back to purpose of what the parties are urging you to do - what use you can make of the material when the evidence you have received over objection.

And, your Honour, I want to follow in with this idea of not being attracted to simply just following the bouncing ball. In fact, the analogy I gave you about being murder - a clear murder of someone that who knows who did it, and this is what Blue J, said in the decision of Bell. In that case the relevant provision prohibits the court making a finding or suggestion of liability. It does not prohibit the court making findings of fact that comprise one or more elements that may give rise to liability without the conclusion that liability arises or may arise.

However, if the court made a series of findings of fact which encompassed each and every element that give rise to liability, that would probably be tantamount to assigning of liability even if the court did not explicitly draw the final conclusion that liability exists.

So, your Honour, the first example I gave you, that is that determining the cause of death, you are making findings of fact but whom I have information about or who may have caused the deaths, but in the example as in this case, what the parties are urging you to do is effectively construct, as Blue J put it, the elements of findings as to an offence, which would be in contravention of s 34(3). That's following the bouncing ball, your Honour, which leads to the only and sole in conclusion that what Zach Rolfe did on 9 November was murder. That's how the parties have put it.

Your Honour, I go on, in respect of our submissions at par 115, *Tune v Carne*(?).

> "It follows that a person who kills necessary contributes to the cause of death. That is nonetheless true where the killing is lawful in self-defence. A Coroner is not concerned with a lack question but would ordinarily set out the relevant facts in the course of finding how the death occurred and the cause of death. The facts will speak for themselves leaving readers of the record of investigation to make up their own minds about lawful self-defence or any similar issue.

At par 116 we cite Nyland J and Perre v Chivell.

> "A finding of criminal or civil liability requires the application of the relevant law to the facts in order to determine whether the essential elements of a given crime or civil obligation have been made out."

Your Honour, I will deal with excessive force, which is really the key topic that looms large in the tendency argument that parties are trying to run and, your Honour NAAJA drew attention to this in the case of *Mangurra v Rigby* [2021] where Kelly J said this - bearing in mind this is an appeal from someone who was convicted for

resisting arrest so it doesn't necessarily bear similarity to what we are dealing with here, but Kelly J said this, at par 34:

> "b) A police officer acts in the execution of the officer's duty from the time the officer embarks upon a lawful task connected with the functions of the police officer and continues to act in the execution of that duty for as long as he is engaged in that task.
> c) It is not the part of the police officer's duty to engage in unlawful conduct. The use of force by a police officer is subject to limits and, beyond those limits, is unlawful.
> d) If a police officer uses greater force than is justified the officer cannot be said to be acting in the execution of his duties."

And so, your Honour, what the parties are effectively saying to you is that, "Make all these findings of fact about excessive force, apply a legal standard - that is it wasn't reasonable". "Enquire into Rolfe's state of mind - what was he thinking?" "We suggest he was lying or making it up."

Your Honour can't do that. *Tune v McCarne* says as much. You can make findings of fact about what Zach Rolfe did - what he saw - what he heard - but you can't then take the next step of applying a standard - a legal standard to then say, "It was excessive force" or "It was unjustified" or "It was unlawful." And that's what everyone in this room with the exception of a few are asking you to do and with the greatest of respect, your Honour, it will lead you to error.

You cannot make any finding that Zach Rolfe at any point in time - especially not 9 November - for it cuts across the jury acquittal, any (inaudible) just an excessive force.

And so, your Honour, there's two ways to then look at it. If you accept - as we say you must, with respect - that you can't make any finding of excessive force and every single matter that this inquiry has gone down - every topic - is irrelevant. It simply falls away. There is no need to worry about his prior use of force history because you can't make those findings. There's no need to enquire into whether racism played a part because the Northern Territory Police Force have agreed with us - there is no direct evidence of that - but it has no relevance to cause and effect and your Honour would be in error to receive and use that evidence now simply for the discretionary purpose - that is applying a power to make comment or a recommendation.

They are irrelevant in the strictest sense of the application of relevance. And, your Honour, relevance is the touchstone, or put it another way, your Honour, given you have a statutory requirement to make findings of fact.

The fact of Zach Rolfe's prior use of force - so what? You can't make any finding of excessive force - only that he used force. The fact of a racist message. So what. A racist message is not causative of Kumanjayi Walker's death. There were no

messages proximate to or directly dealing with Kumanjayi Walker nor a circumstance relevant to cause of death.

In one respect, your Honour, you don't get past first base to then go on to consider second base about whether or not it is relevant to a comment or relevant to a recommendation you make. I mean, a racist message has nothing to do with the administration of justice.

Your Honour, the fact of a misogynistic message - so what - for all the same reasons I've outlined. Campagnaro's evidence - so what? It has no utility to you to determining cause of death which we say was made absolutely plain during the trial and is no great mystery. It has absolutely no utility because you can't use it for the sole purposes of making a finding - sorry, a comment or a recommendation and your Honour, you certainly can't follow on that bouncing ball, reason and tendency.

The state of mind of Zach Rolfe is joined with the defences he ran at trial. The state of mind of a person who uses force only he will know. It's not a finding of fact you can make. The reasonableness of that conduct - which is a legal standard, you cannot make those findings of fact. If it please your Honour, you can't make findings of fact on those matters and because the matters on which you might make findings of fact, such as it was racist text message, you can't then go on to use it, in the greatest of respect, to suggest that that all leads to a tendency that come 9 November 2019, was racially motivated - it was excessive - it was unjustified - it was unreasonable and the defences that were available to Zach Rolfe are somehow cut across and succinctly forgotten.

Your Honour, that is the error that you seriously run the risk of entering into if you accept a position the parties urge upon you to so accept.

Now, can I deal with the text messages as I move to 9 November. We respectfully submit and maintain that the messages going again to use, were unlawfully disseminated to the Coronial office and investigative team, they should not have been received. And, your Honour, we say that in this respect. The ruling Burns J made with respect to the trial was the seizure and subsequent download of the mobile phone.

The use of the messages, your Honour, would've been readily apparent when someone looked at those messages - and naturally, one might think you start with 9 November or the 10th or shortly after - they had no direct connection to the shooting.

Those messages should've been put to one side straightaway and continual interrogation should not have been permitted. It certainly should not have been received because they had nothing to do with the cause of death and your Honour cannot use them simply for the purposes of (inaudible) recommendation. And it was those messages, your Honour, that laid the foundation for this broader inquiry into racism.

And then ultimately, Constable Rolfe gets in the witness box and he's asked, "Have you heard or seen racism?" And he says, "Yeah." (inaudible) and counsel assisting says - as do others - "Well, that's just self-serving." It's not self-serving, your Honour. He's asked a question, and he gave a truthful answer. But the foundation for that enquiry, which we say is beyond the scope, started with a beyond the scope enquiry into his mobile phone.

There is no evidence, your Honour - as the Northern Territory Police Force recognised - that Kumanjayi Walker's death was because of racism. And your Honour, it is incredibly unfair and without foundation, in the evidence, to attach that label to it - as others are - in respect of Mr Rolfe. Now, we're not saying racism can't be a topic. That would be ridiculous. But racism could've been explored in this inquest in a myriad of other ways.

Such as, the involvement of Indigenous Police Officers, guns in community, lack of or minimal cultural education, a (inaudible). Should use of force principles apply differently in communities? Simply asking a witness, "Have you heard or seen" - as Mr Boe submitted to you today - "Why Yuendumu was a failed policing project."

We don't shy away from the fact that racism might be a relevant topic. Haven't said as much. What we have said is the text messages should not have been received. I won't reveal any great direct correlation, but how can you use them to somehow suggest they had any influence on Mr Rolfe's conduct on 9 November?

Your Honour, then we have this extraordinary situation that, having been compelled to give evidence in the witness box about racism and he revealed the TRG, which everyone thought Mr Rolfe was lying about and, in fact, counsel assisting put to him, "You simply said that because you didn't like Meacham King's answer that this wasn't intelligence-gathering." Mr Rolfe produces the certificates.

Those TRG officers give statements. They were false. But Mr Rolfe was examined, up hill, down dale, about said few text messages he exchanges in private with people, text messages the inquest should never have had, and expose no assistance to your Honour in your statutory task come 9 November.

Quite apart from this inquest looking at the oversight and supervision of Zac Rolfe - and other words that were used as an exemplar - he became the target in the way in which the messages were deployed, the way in which he was cross-examined and the way in which parties put to you what Mr Rolfe said in the face of those five TRG officers lying in their affidavits. "It was just self-serving. No, that should be rejected."

Your Honour, I want to turn to 9 November and the submissions that have been made today and some others. And I start with this, your Honour. Zac Rolfe, as the Parumpurru Committee rightly acknowledged, has no obligation to prove anything. He has no duty to this inquest to prove something or a fact. That is not his task. And in fact, at par 28 of the decision of Doogan, it seems to suggest that, in fact, that would be a level of unfairness. What Doogan says is:

> "Once evidence of a particular issue were admitted, those who feared that such evidence might form the basis for adverse comments concerning their conduct, would inevitably wish to challenge it and to call other evidence to rebut or qualify it. Yet, the admission of further evidence might raise further issues and hence, generate applications for still more evidence to be called. Thus, a Coroner might be constantly torn between the need to contain the scope of the inquiry and the need to ensure that all interested parties were treated fairly. More fundamentally, the section does not confer jurisdiction to conduct inquiries of that scope."

So your Honour, it's not fair to just say, "Well, there's ample opportunity to call evidence and adduce evidence." Zach Rolfe has objected to a number of categories of evidence. He has no obligation, no duty to produce evidence to this court. Your Honour, your counsel assisting submitted today that unlike officers on 9 November, there was no recent event that would've elevated his - that is, Kumanjayi Walker's risk profile - because no violent behaviour had been exhibited.

Well, your Honour, he attacked cops with an axe only three days earlier. But that's, again, the bouncing ball of trying to set out that, come 9 November, predisposition in the tendency that Zac Rolfe had, somehow meant that 9 November puts itself in a different category because there was no violence for three days.

Counsel assisting has said this is not to criticise or demonise. Then, in the same breath says Mr Rolfe was undisciplined, egotistical, contemptuous. Particularly contemptuous of Frost. Later your counsel assisting said this:

> "When they arrived at Yuendumu, they" -

That is, Mr Rolfe and Mr Kirstenfeldt:

> "- spoke with Frost."

Compelling evidence, was your counsel assisting's submission, that officers were not interested in what she had to say. Rolfe and Kirstenfeldt knew the existence of the arrest, 5 am arrest plan. And your Honour, can I remind you what Julie Frost in cross-examination in this inquest on that particular topic. Question:

> "Thank you. When you told us that I can't remember the exact words that you used, but you certainly weren't flattering about the way in which Officer Kirstenfeldt spoke to you?---(Inaudible) challenging, right."

Mr Edwardson:

> "In other words, you didn't like the way in which he spoke to you?---No."
>
> "No?"

Question:

> "That was him. The way he presented to you and how you felt, inappropriately, he spoke to you?---Yes."
>
> "What's certainly not what happened in the case of Zachary Rolfe though, is it?---Constable Rolfe didn't say a thing. Hi, other than hello, he didn't say a thing the entire time."
>
> "All right?---And I actually believed he was listening to what I was saying."
>
> "Right. So you believed that Zachary Rolfe was being attentive to what you were saying?---Yes."
>
> "And your evidence is you can now recall, is that he don't - apart from saying hello, he didn't say anything else to you at all?---No."
>
> "And that's your best recollection, is it?---Yes."
>
> "So there was certainly nothing about his manner, demeanour, conversation or anything of that nature that you thought was inappropriate?---No."

That's transcript 920 to 930. But your Honour, everyone here will have you believe that Zac Rolfe's misogynistic messages meant, "He just disregarded Sergeant Frost on 9 November." With the greatest respect to your Honour, that ought be rejected.

Parts of the transcript I just read you make it absolutely plain as day that Sergeant Frost felt no disrespect from Constable Rolfe and any suggestion, the danger of using messages, will have nothing to do with the cause of death or the circumstances of it that somehow, at some earlier point in time, he sent a message which might have misogynistic connotations, means you draw the conclusion under the tendency that he didn't obey Sergeant Frost on 9 November.

Your Honour, that's the danger of the bouncing ball that parties are urging upon you to accept. Your Honour's counsel assisting said - while I'm on that topic, your Honour, you might also recall - and I think it's brief item 3170 - that there was an email from Tania Mace(?) to a number of officers, including Mr Rolfe, thanking them for the way in which they handled a very difficult operation. Tania Mace is a female.

She'd also mentioned that they understood what it's really like to be a bush cop, given that particular operation. Your Honour, once again, that hardly has any connection to what parties are suggesting is Mr Rolfe's disrespect for bush cops in private messages, means you're simply just going to disregard them. Commendation from Tania Mace, female police officer, a bush cop, about your behaviour on a particular operation speaks volumes.

And your Honour, no police officer has come to this inquest who has worked with Constable Rolfe, female or male, Vicary, Gall to name a few - Bauwens, Kirkby - if anyone suggested that Mr Rolfe was otherwise professional, courteous in his discharge of his duties.

And your Honour, the text messages to somehow suggest that should be undermined - messages in private, messages that should never have been explored - have absolutely no relevance, your Honour, to how Mr Rolfe conducted himself (inaudible) evidence that they underpin the way in which he conducted himself.

Your Honour, as to the 5 am arrest plan. Sure, Constable Rolfe acknowledged - I don't even think it's tacitly - that he knew, at least broadly, of this concept of 5 am. But no one knew where Kumanjayi Walker was, or would be at 5 am. Julie Frost asked at the trial.

> "If police had intelligence, it was fundamental that you find out what intelligence is."

This is transcript 234.

> "Officer Felix had as much intelligence as I did."
>
> "So in other words, he didn't know, like you didn't know where Kumanjayi Walker was?---No one knew where he was."
>
> "So Felix couldn't advance the case anymore than you could?---Correct."

Julie Frost.

> "An obvious starting point is where he's likely to be?---Yes."

This is paragraph - page 239 of the trial transcript, 11 February 2022.

> "And you might have had a preference for a 5 am arrest, but that's futile if you don't know where he's going to be at 5 am?---That's correct."
>
> "And so it makes sense, doesn't it, that they would have asked you, 'well where's he going to be at 5 am'. And you say, look I've got no idea?---I'm sure they did ask me."
>
> "And you would have said I've got no idea?---That's correct."
>
> "Zachary Rolfe had told you, I suggest, in order to make a plan they needed to gather intelligence. And since they had no intelligence, he and the other IRT members would go and introduce themselves to the community, get the lay of the land, and attempt to gather intelligence before they could start to make any kind of plan?---I don't recall, but yes."

And later on:

> "He suggested to you, 'I suggest that this approach should be adopted at Yuendumu (inaudible)', you agreed?---We had intel again, the houses that he was likely to frequent. That's as much intel as we had."
>
> "Of course, did you tell them you had no idea where he would be at any point in time?---No one would have."
>
> "So it makes sense, doesn't it, that the IRT members could be saying to you, in this case Zachary Rolfe, we need to get intelligence, we need to find out where he is, and that's how we can frame what we do once we know that?---Yes."
>
> "So it's most likely that a (Inaudible) conversation most likely (inaudible)?---Most likely."
>
> "And I'm suggesting to you at this point in time you provide the map of Yuendumu?---(Inaudible)."

Your Honour, "They then depart at 7 o'clock". Truly. This 5 am plan and all of its detail was communicated to the IRT, and in fact giving them, two things loom large. Why would Frost send them out at 7 pm. Secondly, on the very first page it says, "Kumanjayi Walker to be apprehended under an arrest warrant" was the evidence that's made clear.

Neither Eberl nor Rolfe knew that a warrant existed. So if in truth, this plan had been given to them, and they were taken through it, and yes they might have known a great detail. They did not. And when they leave the police station at 7 pm, Julie Frost, as she's repeated several times in the evidence, "If you come across him, arrest him absolutely."

Your Honour, NAAJA, in their submissions, erroneously I suggest, say that Kirstenfeldt, on the CCTV accepted that he was given a copy of the operation order, and I think they referenced transcript page 1320 or 1390 of this inquest. That was not his evidence. His evidence was, and he repeated it following committal, the first time he saw that plan, the operations order, was here in this very court, in that very box, when it was handed to him at committal. Those were his answers to this inquest. So your Honour, to suggest that there's been this big conspiracy by Rolfe to lie, because he knew he went too far, come 9 November 2019, that he knew he disobeyed the orders of Sergeant Frost, that he knew he shouldn't have done that, (inaudible).

(Inaudible) your Honour. (Inaudible) submissions say (inaudible) wasn't directed to stay back at the police station. The question to Sergeant Frost Mr Edwardson put to her, "Alefaio was directed to stay behind?" And she said, "No, he was part of the 5 am arrest plan". To which the question was, "Whatever was in your plan, he was

asked to stay behind." Alefaio said this at trial, and I cross-examined him again in this inquest, and he accepted it.

> "All right, now you were specifically told were you not by Sergeant Frost that neither you, Smith or Hand were to assist, you were to stay at the police station?---That's correct."
>
> "In other words, you were never told that you were to go out into the community with the IRT to assist in an arrest?---That's correct."
>
> "You were told that you were to remain at Yuendumu Police Station and assist once he'd been arrested?---That's correct."
>
> "During part of the briefing (inaudible) is Mr Walker's to be arrested the next morning at five or 5.30 in the morning, she wanted me to accompany them."

Bear in mind, Frost said if you come across him, arrest him absolutely, when they left at 7 o'clock.

> "Sure. But I'm talking firstly about when they went out. You were told specifically that you were not to join them when they departed at 7 o'clock?---That's correct."
>
> "And the same applied to her, Hand and Smith?---That's correct."
>
> "So all you were told was that if the arrest happened to occur the following morning, that on that occasion you might be - come on at that shift at 5 o'clock and you might go out and help them?---That's correct."
>
> "But in the meantime, your understanding was that they were leaving and deployed at 7.05?---That's correct."
>
> "They knew that 577 was the last known place he'd been seen at?---That's correct."
>
> "Police did not exactly where he was to be located?---That's right."
>
> "They were to conduct intelligent gathering exercise to try and locate him if they could?---That's correct."
>
> "And if they came upon - upon him, they were to arrest him?---I believe so, but."
>
> "And if they came upon him and arrest him, and you were still on duty, you would then help the others facilitate the arrest process?---If that happened to take place, then I'll assist them."

And so what counsel have said to you today about tendency of text messages, that if Rolfe was investigated earlier, if he didn't get accepted to the police force on the application, and ultimately Rolfe and Kumanjayi Walker would never have crossed paths. Well, your Honour, sure. But that's mere speculation and supposition. It's that day then reasoning. Of course, if Constable Rolfe wasn't a police officer he wouldn't have been with Kumanjayi Walker.

It's like saying if Constable Rolfe wasn't born, he wouldn't have come across Kumanjayi Walker. It has no assistance to your Honour's enquiry. And we say, your Honour, Rolfe has neither lied about knowledge of the 5 am arrest plan. He's neither lied nor disobeyed that plan. And your Honour, what occurred afterwards, as we all know well, was that they came across him and arrested him absolutely. Your Honour, your counsel assisting said, in respect of this very significant issue that the parties make submissions on about (inaudible) being a fabrication of Mr Rolfe saying that Kumanjayi Walker reached for his Glock.

Well counsel assisting said this.

> "That was not put to Barram at trial by defence, or at committal."

That's true, your Honour. But your Honour, our position at trial was, and it's in the transcript, you don't pause the body-worn video. You don't analyse it frame by frame. You don't stop it, slow it down, rewind it. Your Honour's (inaudible) the evidence which is in your brief. There's limitations of body-worn video. It's on your chest. It sees out. It doesn't capture everything. Just because something doesn't feature on the body-worn video does not mean it did not happen.

And your Honour, it would be improper reasoning to suggest just because you can't see it, it did not happen. And your Honour, if it was so significant, as parties put to Mr Rolfe, that it was a fabrication or a lie, why didn't they take him to the body-worn video, which, as you know from our submissions, no one sought to play in this inquest, and ask Mr Rolfe to tell them at what point in time in the body-worn video, in the interaction, do you say that Kumanjayi Walker reached for your glock. If it is such a significant issue, your Honour, there's no point banging on the defence lawyers for not asking it. They should have asked it themselves.

Your Honour, in respect to McDevitt, his expertise was not challenged. Some might say and that's not an experience in the Northern Territory but, your Honour, he was the architect of the very use of force policy that the Northern Territory had in operation at the time.

His inescapable opinion - it features at page 3 of his report and it is this, I quote:

> "Rolfe's actions were necessary, appropriate and proportionate to the threat. His actions were in accordance with the policy and training of the Northern Territory Police Force."

Your Honour, just because Sergeant Barram took a different view doesn't mean you ignore or put to one side the opinion of McDevitt.

Your Honour might recall if you read the trial transcript of Detective Sergeant Barram that he was played a video that he posted on his own social media of a police shooting where an assailant had a knife and his comments on the top of that video were, "Brings a little bit of reality into the argument" or words to that effect. Your Honour, that's why we say Sergeant Barram was discredited and you can't simply just ignore competing expert evidence, particularly when parties here are urging on you to find 9 November was excessive.

Your Honour, the last bit I want to say about that before finalising, again following this bouncing ball - the bouncing ball which will lead you to liability findings - the bouncing ball we say would lead you into error - is the submissions of parties that your Honour make a recommendation of s 148B of the *Police Administration Act* be repealed but it started as you appeal (inaudible) acquit provisions in the Code. You appeal - repeal double jeopardy.

Your Honour, I go back to that question, for what purpose would those submissions possibly be put to you, other than to suggest that Constable Rolfe committed an offence on 9 November.

But your Honour, you haven't broadened this inquiry into s 148B and if you did, your Honour, it would have the true hallmarks of a Royal Commission. You haven't enquired as to how it came about, why it came about, the intentions behind it. It was left for a jury. It was a defence available to Mr Rolfe.

And your Honour, we know nothing about which basis the jury acquitted. And a mere abstract statement that, in effect, allows the police to do whatever they want does not inform you.

Your Honour, I would (inaudible) to take that on board and make any recommendations about that provision, in my respectful submission, you risk falling foul of the prohibition of s 34, because that particular defence and the legal standard that applies to it when all of these parties here, the vast majority are asking you to accept Rolfe used excessive force in all three shots.

(inaudible) would have you reason that he was guilty of murder, and your Honour cannot countenance such a submission and you ought not traverse that.
Your Honour, this has never been about heroes and villains. As senior counsel said after the acquittal and I'll say again, "There are no winners. A young man lost his life and another young man, that's Zachary Rolfe, was charged with murder."

Your Honour, it is truly a tragic circumstance, and let's set - or your Honour should set realistic expectations. Let's apply common sense and the authorities demand you must. Importantly, your Honour should not be encouraged to go down a path that seriously risks undermining the jury verdict of acquittal or infringes, which

would be a jurisdictional error, upon the prohibition of s 34(3), making findings of fact as to excessive force.

You can't, as to the state of mind, you can't - as to whether what Constable Rolfe did on prior use of force occasions and most importantly, on 9 November 2019, was justified or otherwise, you simply cannot do it.

Your Honour, you're in a restricted jurisdiction and it's too easy to get caught up in hindsight, to get caught up in the minute criticisms in this leisurely atmosphere as a courtroom, which I quoted from *McIntosh v Webster*.

But your Honour, there are constraints under your Act about what you can do and what you must not do, and your Honour needs to approach those constraints carefully so you do not fall into error.

Your Honour, those are my submissions.

THE CORONER: Thank you, Mr Officer. We are going to adjourn until tomorrow. Are we commencing at 9:30 or 10:00?

DR DWYER: If we can safety do 10:00. Can I just confirm that all parties are going to be here or have an opportunity to be here. I do have submissions in reply, your Honour. I don't think that I will be longer than 15 or 20 minutes, but I will have submissions in reply and I don't want anybody complaining afterwards that they haven't had a chance for you to listen to them, so if arrangements need to be made.

THE CORONER: Sure.

DR DWYER: We can do that.

THE CORONER: Well, we normally make arrangements to link people in who - - -

DR DWYER: Yes.

THE CORONER: And it's also being livestreamed.

DR DWYER: And we can provide transcript afterwards as well.

MR OFFICER: Your Honour, I had a note to pass to you that I'm departing back to Darwin tonight, because I'm still awaiting a jury verdict. If I can be excused for tomorrow.

THE CORONER: Sure. But of course, if you want to Teams link in or make any other arrangements for links, we will accommodate that, Mr Officer.

MR OFFICER: Thank you, your Honour.

THE CORONER: Thank you. We'll adjourn now and we will resume at 10 o'clock.

ADJOURNED