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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 25 NOVEMBER 2022

(Continued from 22/11/2022)

Transcribed by:
EPIQ

THE CORONER: Take a seat.

MR COLERIDGE: Good morning, your Honour. The first and only witness today will be Mr David Proctor. I call David Proctor. He's in the witness box.

THE CORONER: Thank you.

DAVID PROCTOR, affirmed:

THE CORONER: Thank you.

XN BY MR COLERIDGE:

MR COLERIDGE: Mr Proctor, can you restate your full name for the record?---Yes, my full name is David Proctor.

And what is your current occupation?---Retired.

And how long have you been retired?---Just over 12 months.

Okay, so some time in 2021?---Yeah, I finished with the Northern Territory Police on I think it was the 2nd or 3rd of September 2021.

When you retired in September 2021, how long had you been a police officer?---It's a strange thing that you remember the exact details, but 34 years and seven months.

And all of that in the Northern Territory?---All that in the Northern Territory.

I won't ask your Honour – sorry, I won't ask you to take your Honour through a year by year history of your time at the Northern Territory Police Force, but can I ask you to explain what your substantive position was when you retired?---Yeah, my substantive position when I retired was at the rank of commander, and the area I looked after had a few changes, given some youth justice stuff that your Honour might be aware of. But I think it was the Territory operational support command. So, the areas that I had responsibility for were youth justice, prosecutions and Territory communications and the school-based policing areas.

And during your very lengthy career, you served in all urban areas in all jurisdictions?---I've served in – yeah, so Darwin, Tennant Creek, Alice Springs and Katherine.

And you also served remotely from time to time?---Yeah, I served at Harts Range, I think in – my first remote station was Harts Range and then I moved to Tennant Creek. Then I went to be the officer in charge of Kalkaringi and then into Katherine as a detective, then to Darwin as a Sergeant, then to Borroloola as a substantive sergeant – sorry, this will go on for a while, but I'll try and keep it – then, to Alice Springs as a detective sergeant, then to Darwin as the senior sergeant of major crime on promotion. And from there, I think I stayed in Darwin for a while as a

superintendent and then a promotion to commander in Katherine as north commander, northern command.

So, you became a commissioned officer in 2000, I think. Is that right, as sergeant?---Yeah – no, the superintendent. I think it was 2004 or 2005 I was a commissioned officer as superintendent.

And in the 15 or so years since, you were Assistant Commissioner – you held every Assistant Commissioner role in the Northern Territory Police Force. Is that correct?---Yeah, I relieved in every Assistant Commissioner position.

You've also got significant investigative experience. Is that right?---Yeah, OICs, as I say, a detective senior constable in Katherine, detective sergeant in Alice Springs and whilst here, relieved for extended periods as the senior sergeant. And then was promoted to the senior sergeant of the newly formed major crime unit.

Can I just pause you there? At that time, the major crime unit, the portfolio of the major crime unit covered everything; sexual offences, homicides?---Yeah, so there were two streams at that time. There was two senior sergeants. Mr Pollock had been promoted to senior sergeant in an area that they called the "Special Operations Section", which was mainly focussed around organised crime. And I had the major crime portfolio which was sex crimes, fraud, computer crime and general crime.

And I take it from your last answer that you've worked with and around Mr Scott Pollock for – well, you did work around each other for many years?---Yeah, we were detective sergeants in Alice Springs together, and then obviously in Darwin.

And your level of respect for him as an investigator?---Very high, obviously. He is a very good investigator.

Now, in addition to you, I suppose investigative experience in crime, have you ever investigated any Coronial matters?---Yeah, certainly, I suppose at a lower level as a senior constable in Katherine, you would – not that they – I'm trying to diminish them, but you would certainly attend obviously non-suspicious deaths or homicides. I suppose relevant to this portfolio, I have investigated deaths in care at Correctional facilities. And while I was the commander of Katherine, at the time, Deputy Commissioner Maines pointed me as the officer in charge of the death in custody of Joshua Walsh. That matter related to, initially an abduction at gunpoint of Mr Walsh's girlfriend from the women's shelter in Darwin, which I guess resulted in him being located at a unit in Ludmilla where the TRG were deployed and put in a cordon and containment and he suicided by shotgun while he was in the premises. And I was appointed by Mr Maines to do the investigation into that on behalf of, at that time, the Coroner, Mr Cavanagh.

In 2020, you were the incident controller for the COVID-19 pandemic. Is that right?---Yes, that's correct.

And it's at that point in your career that you were contacted and brought into the fold,

as it were, to be involved in this investigation?---Yes, however, prior to that, I had been acting as an Assistant Commissioner crime for 10 days while Mr Anticich was covering for, I think it was either Mr Murphy or Mr Smalpage. And during that time, I had – I was involved in the discussions around the selection of Mr Alpert.

Yes?---And then my only other involvement prior to coming onboard in relation to the Coronial matter was obviously, was the commander in charge of prosecutions when the initial brief was put to Mr Bryson.

Did you have any involvement in the development of that brief?---No, the only involvement I had was a phone call from Mr Bryson, where he expressed his concerns in relation to the information that was required from the DPP and I provided some advice to both him and Mr Dole as to how they could go about resolving that issue.

And I'm right, aren't I, that the concern was that it appeared that an oral advice had been given from the DPP recommending a charge of murder. But here was some concern that that advice should be put in writing, at least in the form of an email?---Yeah, so normally when the charge of murder is laid, approval from the DPP is required, and Mr Bryson, on getting the brief, indicated that that wasn't there. And so, I think an email or similar was requested, however, wasn't provided. My advice to Mr Dole, who said he had been in the meeting when that approval was given, was that if that was the case, he could possibly sign the indictment as a deponent and we went from there. The reason for that being, if the DPP had not provided the advice, obviously they would progress the file the next morning in court anyway. So, yeah, that was pretty much my advice.

I want to ask you about obviously when you became involved in the Coronial investigation, some progress had been made investigating. Is that correct?---Yeah, so I came in – I can't remember the exact date now, but I think it was roughly eight months after the incident had occurred. So, it would have been around June or July, possibly. Sorry, I can't recall the exact date. And at that point, pretty much, I suppose from my perspective, in terms of physical investigation, pretty much most of that had been undertaken by Mr Pollock and his team.

And I don't use the word pejoratively, but you inherited some draft reports that were also being developed for the purpose of the Coroner?---Yes, how that draft – how those draft reports or information or however they want to be described came about was, I suppose at the point that I took over, there was a request from both Mr Anticich and the Coroner to have some form of report in place. Certainly, Mr Anticich's point of view, he wanted a final report by, I think it was November, which I thought at the time was a little bit ambitious, but – so, between Mr Pollock and myself, obviously, Mr Pollock had been in charge of the investigation for some 12 months, and had quite a large amount of information that he had already reviewed. And so my thoughts were that he would start preparing a draft report, or provide information to enable the final report to be prepared. Initially, in our conversations, and my view was always, that it would be perhaps a co-signed report. Obviously that didn't come to fruition, because Mr Pollock took leave without pay,

pending the time, and prior to the report being finalised.

I just want to ask you a couple of questions about the report. You've referred to it as a final report. What do you see the role of a Coronial investigation report like this being?---I think that is my final report for the time that I was the Coronial investigator. I think within the report, you'll see there are areas that we were not able to, I suppose, for want of better term, resolve, or conclude. And I think in my report I advised that the – there were certain elements that would either be further advanced or the issues resolved, or made more clear, either through the Coronial inquest or at the trial.

So in a sense, the function of the report is to draw together the material that had been gathered, and then identify issues without necessarily resolving all of the issues?---Yeah, look from my perspective, the way I wrote the report was to examine all the information. We'd been given some clear directions from the Deputy Coroner, or the Coroner via the Deputy Coroner, on what issues they wished to have explored. It was to go through those. For me, it was very much looking at the systems. What systems had been in place. What systems had failed, if possible, why had they failed. And then in the report I obviously make considerations. They're not recommendations. In my view, it's the – her Honour's job to make recommendations. But they were more considerations for the Coroner. But also a copy of that document is provided to the police, and I was aware that we also had an organisational response committee to address some of those issues. And for their information as well.

Now I think you identified one of the reasons that the issues necessarily remained unresolved. And that's just because the criminal trial and the Coronial process hadn't taken place. Is another reason that, there were good reasons not to get in touch with certain witnesses, while the criminal process was being undertaken?---I think for the issues in my report, it was more that those witnesses were subject to being witnesses at the trial. And I had some discussions with the Deputy Coroner around that, as to whether or not we should progress, even just try to get statements or interview, purely on those issues. In my mind I didn't think we should. I – and he agreed with that. That we didn't want to step over the mark of, at that point, we were very close to being – well, in our minds, the trial was going to commence quite quickly. So we didn't want to be seen to be interfering with witnesses. I believe prior to my arrival there, there had been some issues raised around members being – or being interviewed or spoken to on multiple occasions. And I think Mr Anticich had been approached by the Association in relation to that, and the welfare of members. So I don't believe that – I think there'd been some agreement or direction that unless it was absolutely essential, further statements would not be obtained from those people.

Now, you ultimately signed the report?---Yes.

And so you adopted the report. It was your report?---Absolutely.

But even though Mr Pollock had written some part of it, you took responsibility for it, and owned the report, is that right?---Yes.

But it remains the case that there are parts of this report that you did not draft yourself, is that correct?---No that's correct. And I think I make that quite clear in the report, that an issue is identified. And some of those issues were identified in the information provided by Mr Pollock. And that they are still live issues, or at the time, they were still live issues. And that they again, maybe resolved either through evidence adduced at the trial, or in the Coronial, or from further investigation.

Do you have a copy of the report in front of you?---I didn't bring one with me, but there might be one here. No I don't.

If not, we can provide you with one. Alternatively, it's document 1-1 on the brief.

142 please?---Thank you.

You can see a heading on that page 142, "Investigative Bias Expert Witness"?---Yes.

Is this one of the unresolved issues that you were talking about?---Yes, and look I have read the report prior to appearing today. And I would submit that most of the areas that sit in that investigative bias component are the issues that we were unable to resolve.

Okay. And so you weren't purporting to conclude that there was investigative bias, you were just saying, being unable to contact these witnesses because the criminal trial is ongoing, and the Coronial process hasn't commenced, this is an unresolved issue. It is worthy of further consideration?---Yeah. I think it – I make – I try to make it, I think in my mind, quite clear. Where I say that these concerns are in the report by Mr Pollock. And that they all raise concerns of potential investigative bias. And then I clearly state, the summary and rationale for these concerns are detailed in the following paragraphs, which are taken directly from the draft report.

Of Mr Pollock?---Of Mr Pollock.

I see?---And then, so I set those out, I believe. And I apologise, it is fairly lengthy. But I think at the very bottom, if I go through this.

Now, can I take you to one - - - ?---Yep.

- - - specific part of this. Which is – are, pages 146 and 147 of the report?---Yep.

Where there's some discussion of Detective Senior Sergeant Barram's expert evidence?---Yes.

Now, I take it that you've been following these proceedings, the Coronial proceedings?---Being the good retired person I am, I haven't been sitting in front of the screen every day and watching it, like a soap opera. But yes, I've – you're

obviously interested in whether your name comes up, and what it might be. It's come up a few times. Yeah, look I have. And obviously in preparation, I have read some of the transcripts of evidence, and heard some of the footage that has been – some of the evidence that has been given on video as well.

Now, an opinion is provided, I take it by Mr Pollock. But you identified it as an issue in your final report, about potential confirmation bias on the part of Sergeant Barram. You agree?---Yes.

Now, that opinion is based on some assumptions of fact, would you agree?---Yes.

For example, it appears to be based on an assumption that Sergeant Barram attended a select committee meeting with family members in Yuendumu?---Yes. I think that's the assumption of facts that were available to the investigator team at the time.

I - - - ?---I just want to clarify, it was at the time, yes.

- - - absolutely. I'm not in any way being critical?---Yeah.

I suppose what I'm coming to is, Senior Sergeant Barram has been asked about these passages. And has given evidence that he did not actually attend that meeting. And instead, conducted in effect, a view of the crime scene in Yuendumu. Now, he has also clarified that in his view, at no point was – at no time, was he a part of the investigative team. And has given evidence that far from being rushed, he only provided his first statement in March of 2020. Having followed some of the evidence, and in light of those facts, to your mind, is the potential issue resolved?---I think it goes to the comment I make on the bottom of the report on page 148, where I say, "Further enquiries or evidence may determine if the evidence is opinion based, is evidence, or opinion based." I guess on that evidence, the evidence is that what we – the information we initially had, has changed. And that, I think it's hard for me to say 12 months after the event, and not being involved in it, whether bias wasn't or wasn't present. But I think it's fair to say, in my mind, it was the potential of bias. Obviously Mr Pollock had a more firm view. But on the evidence I've heard in relation to – and that you've just provided, if it's not the case that he wasn't part of a delegation, but didn't go to those meetings, then obviously the information we were provided has now been seen to be incorrect.

And although you couldn't exclude the possibility of confirmation bias in any case, you wouldn't be of the opinion that there was confirmation bias in this case?---Not on the more recent evidence provided, no.

The second topic I wanted to ask you about concerns the new general order, Crime Homicide and Serious Investigation. It's a draft general order. Have you been provided with a copy of that?---Yes, I have.

I just wanted to ask you one question about this document and you can find the relevant passage on page 37. Before I ask you to read that can I just ask you this.

Would you agree that in cases of deaths in custody, the actual and perceived independence of the Coroner from the police source is important?---I would submit it's absolutely paramount.

I suppose my question for you is this; in an ordinary Coronial inquest it is quite normal for the Coronial investigator to send the final report up the chain to Assistant Commissioner before it is then sent on to the Coroner. Would you agree that in cases of deaths in custody, it might be more appropriate that the Coronial investigator send it simultaneously up the chain of command to the Coroner?---So my customary practice in this matter and also in the Walsh matter which I would class as fairly sensitive matters for the police force, were I would - well in this particular matter and also in Walsh, I provided my final report to the Coroner's office and sought permission to then provide it to the Northern Territory Police.

And am I right in thinking that the reason you do that is that in that way there can be no suggestion that senior management within the police force is leaning on a Coronial investigator not to criticise the police, for example?---Absolutely.

Your Honour, those are my questions.

THE CORONER: Yes, Ms Morreau?

XXN BY MS MORREAU:

MS MORREAU: Thank you, your Honour.

Mr Proctor, my name is Paula Morreau and I appear for the Brown family, family of Kumanjayi Walker?---Yes.

If you can keep your report there there may be some details that I would like to take you through. The first area is the issue of Mr Rolfe's arrest which you deal with at page 82 of your report?---You will have to excuse me, I didn't quite realise how long it was when I wrote it, so I apologise.

Well, it was riveting reading, if I can say that?---I tend not to agree after I had to read it again in the last few days, but thank you very much.

Have you got that passage?---I am nearly there.

At the top of page 82?---There must be a quick way of doing this but I'm on it now. Bear with me, I apologise. Okay, yes.

Now, you address a concern that had been raised and then investigated about whether or not Mr Rolfe's movement to Darwin was done for a proper purpose, correct?---Yes.

Can I assume from what you have discussed in your report that you did not investigate any concern about favouritism in relation to the timing of and the position taken by police on the telephone bail application (inaudible) Judge Birch?---No, no.

Now, I haven't seen a statement from Detective Senior Sergeant Newell, who actually made that application. Do you know whether there was any investigation as to any written material being emailed to Judge Birch for the purposes of that bail application?---No, I don't. As I say, we didn't necessarily look at that

To your knowledge, is there data held by Northern Territory Police that could be accessed by a team such as yours which could tell us whether application for bail for murder have in other cases been made over the telephone?---Look, you would probably - I don't think there is data. You may have to go and look at the actual prosecution briefs because obviously it would have - it might be in the IJIS system under - because obviously that is made to a judge and the judge - my normal understanding is that then they update at some point later, those details are then placed into IJIS so it could possibly be from IJIS system under - because obviously that is made to a judge and the judge - my normal understanding is that then they update at some point later, those details are then placed into IJIS so it could possibly be from IJIS but then as to what the contents and information that is provided to the judge at the time, I don't know if that would necessarily appear in there.

Certainly, so there might be some statistical information but not any real substantive information in relation to - - -?---You could possibly get that out of the IJIS system through Attorney-General's department.

Do you know yourself whether applications by phone for murder in particular, are common or even ever done? Other than in this case?---Well, applications for bail - well, because of the - look, you will have to bear with me because I haven't looked at the *Bail Act* for quite - at least 18 months.

It is certainly permissible under the *Bail Act*. I just wanted to get a sense of whether it's a regular occurrence?---Yes, and it is and in most cases where you are charging with those offences. Even if bail is refused a bail application is made, in accordance with the *Bail Act*. So I would submit yes, in most cases bail applications are made.

I see, but you certainly don't have any direct knowledge about murder charges in particular in that - - -?---No, I can't recall in my experience where police bail has been granted to someone that I personally have been involved in the charge of murder.

And similar, given your extensive experience, is it at least your experience that applications, when they are made by telephone, are made by members of the arresting team versus, for instance the watchhouse sergeant?---Yes, and I think that at times is because although they are the investigating team, I also have a broad - probably a broader understanding of the elements required to address the elements in the bail application, whether it is for or against the person getting bail, whereas the custody sergeant really is in the watchhouse dealing with every person in custody, even an initial brief for a charge as serious as this has some complexities to it and

even bail applications for these matters would sometimes be complex, so I think that is probably one of the rationales for it.

Do you understand that both at different times might make those applications - that is either the watchhouse sergeant or - or (inaudible)- - -?---Potentially, yes.

Now, did you, as part of your investigation, ascertain whether Mr Rolfe spent any time in a cell in the watchhouse before he was granted bail?---No, I have to be honest and say, from what is in the report and from my recollection I don't think we looked that closely at those particular matters.

Thank you. The second topic is mutual dragging, which is one of some importance to my clients. You deal with it at pages 92 to 94 of your report?---Yes.

While you are turning that up I might ask you, because I expect you will know, as you've noted in your report, it was a requirement under the custody and transport instruction that alternatives to dragging by members be utilised, correct?---Yes.

And that, of course, was a change in policy that was taken initially from the Royal Commission into Aboriginal deaths in custody?---Yes.

And then informed by subsequent Coronial decisions, correct?---Yes, that's correct.

Now, ordinarily one might think that resuscitation methods would occur in situ in the situation where someone has sustained a firearm injury, correct?---Yes.

Now, of course, in finding in your report that this was a regretful component of the factual matrix, you considered it somewhat unavoidable - at least in your report, which I'd suggest, accepted the officer's fears of reprisal in the location at face value, correct?---Yes.

Now, accepting that may be the case for a moment, did you consider that there were other alternatives that could have made this a much more humane event, for example, using the four or five officers who were present to carry him, without dragging him, to a vehicle?---From - I accept that could be a possibility but I think based on, as I say here, in my view that it was regretful because of the fears of reprisal that officers have indicated in their statements.

I am asking you to accept that that may be the case, but there are still alternatives available I am suggesting - even if there was that fear?---I think that could've - yes, I think it could be that would be an alternative. I don't think in this situation though - and I don't know if the officers were questioned on that, but certainly part of that would also be officers providing, for want of a better term, security for the officers who are actually - - -

That's a potential?---Yeah.

I think we had at least five officers - - -?---Yeah.

- - - at the location though?---Yeah, it's probably difficult for me to answer that question in terms of, was it an alternative, because it would probably have to be done to those individual officer's thoughts and feelings at the time. If this was a situation where similar circumstances, but without that level of concern on the officers then certainly it would be quite reasonable for five officers to pick a person up and assist them into the back of a vehicle, but given the - - -

It's potential alternative, you would agree though?---Potentially, yes.

Yes. And another potential alternative, although it doesn't address the dragging issue, is to ask his mother, who was nearby, to accompany him in a vehicle that was leaving the scene?---I think, in these circumstances, I don't know if that is a alternative that I would possibly have considered, given the whole nature of the incident.

Why not?---I think it seemed to me, it seemed quite dynamic.

It certainly would have – we have, of course, a person who's suffering a near fatal injury at that point, and his mother is outside very close by. It's certainly a possibility that officers could have - - -?---I think so, yeah.

- - - included a family member?---Potentially, yes. But I think again, I suppose – I wasn't there, so I don't want to put my words in the officers' – I think it's a possibility. I think there were also some concerns in terms of risk in the type of vehicle that we use, but also - I'm not sure, other that, obviously, you want to allow the family of the person and the person you would hope that presence would be comforting for them.

Indeed?---But I'm not sure what the officers, while Kumanjayi was in the back of the vehicle, were actually doing and whether that would have been an impediment, I don't know. So, it's hard for me to answer that.

All right.

THE CORONER: There's a second vehicle.

MS MORREAU: Indeed. There are more than one vehicle - - -?---Yeah.

- - - from outside. I think in fact it was three vehicles ultimately?---Okay. So, if you're asking me - - -

So, three possible - - -?---So, if you're asking me, was it – is it possible that Kumanjayi's mother could have gone in one of the other vehicles, not necessarily the vehicle he was in?

Indeed?---I would say that, indeed, is certainly an option. Sorry, I probably misunderstood, thinking that you would want the mother to be actually in – perhaps

in the vehicle - - -

Where he is - - -?--- - - - where he is being treated.

- - - being treated by officers?---Yeah.

Okay?---My apologies.

Either that, or in front of the vehicle in which he – where he was in the back of that.

Yeah, I'm not sure what sort of vehicle it was, so - - -

Now, moving to the issue of directions to these officers not to speak to each other about events, which you deal with at pages 94 to 98 of your report. Now, you've made some comments that those directions ought to be emphasised in the general orders applicable to deaths in custody. Correct?---Yes.

Now, of course, that obligation was already contained in 12.3.3 of the Deaths in Custody General Order. That's right, isn't it?---Yes.

You found, as part of your investigation, you've mentioned at page 96 that there was no evidence there was any direction by the Alice Springs investigators who arrived in the early hours of the morning to those witnesses who were at the station to separate or not speak of the events. Correct?---From my recollection, I think Leith – Sergeant Leith Phillips had given some instruction around separating the witnesses.

Indeed?---But certainly, after interview, I don't believe in any of the interviews there's any direction on the part of the investigators to remind members of their obligation not to confer.

Yes. Well, if I can just press a little more on that, Detective Acting Senior Sergeant Phillips indicated that he had notified that to the Alice Springs investigators who were travelling to Yuendumu. Correct? And I think we've heard evidence from Mr Pennuto that he had directed Mr Phillips in that regard. However, none of that actually occurred on the scene in Yuendumu. That was the - - -?---No, I think that's a fair assessment. I wasn't aware that Mr Pennuto, until he gave evidence, had contacted Mr Phillips. Certainly, in the information I read, it seemed that that information to the investigative team was from Acting Senior Sergeant Phillips.

Yes?---But certainly, as I just alluded to from – it appears when you read the interviews that that further information or direction isn't provided.

And in fact, you make that finding at page 96 of your report, that you have been unable to locate any evidence to indicate that that had occurred. Yeah, there was certainly lots of discussion about it, but it doesn't look like the – I think, as I say in the report, there was certainly, at times, comments from Mr Wurst, Pennuto and Commander Tonkin, but it doesn't appear that those, I guess thoughts - - -

That actually - - -?--- - - - that actually was implemented, yes.

Indeed. Do you know whether there was any consideration of remedial or disciplinary outcomes in relation to the lack of delivery of those directions to the officers who were on the ground?---No, I don't.

That is, you don't whether anything has happened?---No, I don't know, yep.

Not that it has not happened?---No, I don't know if any disciplinary action, remedial or otherwise, has been taken in relation to that.

And then, similarly, a similar question in relation to the evidence that was unearthed about the social barbecue that happened at Mr Rolfe's house on 11 November. Do you know whether there has been any remedial or disciplinary outcomes from that event?---No, I don't.

Now, we've heard evidence that Mr Rolfe's phone contents were only downloaded quite late in the investigation and that would have been after you were appointed to the Coronial team, which I think was August 2020, and then the phone download occurs and is disseminated to the Northern Territory Police in November 2020?---Yeah, that - - -

Does that accord with your recollection?--- - - - seems right. I must say I'm a bit fuzzy on dates.

That's okay?---But yeah.

But do you recall if there was a delay in the download of the telephone from Mr Rolfe?---From the time of its seizure, do you mean?

Yes, from the time of its seizure?---Look, to be honest, I wasn't aware – I was aware that phone had been seized. I didn't know what date. That was more from the criminal side of the house. I was made aware by my team at the time that the contents of the phone had been downloaded and accessed.

Yes. And in fact, your team when through the actual contents of the phone in order to ultimately provide some of that material to Professional Standards Command to consider disciplinary responses, didn't they?---Yes, that's correct.

And police officer, Brett Wilson, provided a statement in the criminal prosecution in March 2021 to an officer called Greg Keane. Do you know whether that was part of the criminal investigation or part of your team in the Coronial investigation?---That was the criminal. So, from my perspective and it was Senior Constable Kingston who was our, I suppose, phone guy, and my direction to him after being made aware of one particular item on the phone that constituted a potential breach of discipline was to do an analysis of it and identify matters that might be relevant to the Coronial inquest.

Yes?---And as a result of receiving those and reviewing those, I then provided a report to the Professional Standards Command.

Indeed. Now, so did you then, yourself, become aware of the kinds of messages that have been the subject of evidence in this inquest?---Yes.

Extremely racist, misogynistic and other kinds of concerning behaviours being revealed in those text messages?---Yes, and as a prescribed member at the rank of commander, that is why that report was drafted and forwarded to the Professional Standards Command for further investigation of those matters.

Thank you. Now, they're not set out in any detail in your report, the content of those text messages?---No.

Do we take it then that when you were making some preliminary comments about systemic racism and cultural bias that they were not taken into account when you were reaching those views?---That's a good comment. I'm not sure that they were at that time.

No?---Because it was very specific, I suppose, for me. We had got the information. It was always going to be attached to the brief. I have to be honest though, we didn't do – in my report, I didn't address those things particularly, but by the nature of the – some of the text messages as we now know, I think it was pretty obvious that they had racial connotations to them.]

Certainly. And may well be relevant to any findings in that regard by - - -?---Her Honour.

- - - her Honour, looking at this in more detail?---Yes.

Now, do you know whether any disciplinary proceedings were recommended by your office or referred to professional standards in relation to other individuals involved in those text exchanges?---So, I actually didn't make any recommendations in relation to – other than, I suppose, in relation to, other than I suppose in relation to Constable Rolfe, I advised that they were elements that may constitute breaches of discipline. And the whole package was referred to Professional Standards Command, to review all of those.

(Inaudible)?---So in my mind, Professional Standards Command would then probably pick up some of those other members, who have participated in sending those types of messages.

That would be your expectation?---Yes.

Now your evidence before about providing a final report directly to the Coroner, I appreciate, did you provide any draft reports to Northern Territory Police Force in advance though?---I think in the – I did, very early in the piece a document that we called "The Consultation Draft."

I see?---That was again firstly provided to the Coroner. That was at the request of the Deputy Coroner, who just wanted an idea to see where we were – what we were progressing.

Yes. Did that also go to Northern Territory Police?---It did, after the Coroner had been given his - - -

(Inaudible)?---Yes - - -

And then – I'm sorry?---No, go on, go on.

And then is there a process where there's response given to you, before you finalise your report?---Not from the Northern Territory Police. That only went to Mr Anticich, who was my direct report from the police line.

Yes?---I have to say, it was a document really, that didn't have a lot in it, because there were so many areas that we were still developing. So I think - - -

There's not a lot of commentary in it, it's more factual I - - - ?---Yeah, so it was really about the – the facts – the initial facts that the Coroner is required to address in relation to death and the like. Not so much the more systematic stuff.

Yes, and so would you say then that there was no input from Northern Territory Police, outside of your – your command, into the substantive commentary recommendations contained in the report?---In my report there was no – actually no, I – I'll correct that. In the report, there is a paragraph I think that talks about bias towards, in favour of Constable Rolfe.

Yes?---When I provided my report to - - -

Mr Anticich?---The Coroner – the Coroner. And then to Mr Anticich, Mr Anticich contacted the Office of the Coroner. I believe The Deputy Coroner, Mr Kelvin Currie, and requested that certain elements be, in relation to that paragraph, be included in the report. Mr Currie contacted me and advised that he thought that was appropriate. Because – and those elements were for investigation post. So that – I think there's four or five dot points - - -

I see, I'm just – so I'm clear what process your describing. You're describing matters that were contained in your draft report, relating to your investigation of whether there was any - - - ?---No - - -

- - - no?---No, they were absolutely matters that we hadn't covered in my draft report.

It was a request that you investigate any concerns about bias towards Constable Rolfe, in the course of your investigation?---Yes.

I see. So it's a request for more information?---No – I probably need to re-clarify it. If you go to my report - - -

Yes, what page?---There's a paragraph – now I've got to find it.

Your Honour, I note that my 20 minutes is up, may I have leave to continue?

THE CORONER: Sure. Have you got much more?

MS MORREAU: I do have some more, but I also understand that Mr Boe may not have any questions, if I've covered all of the areas from the family's perspective.

THE CORONER: All right, Ms Morreau.

MR COLERIDGE: If there's no objection, your Honour, I also have a hard copy, that might be easier for (inaudible). There are some markings is the only thing.

THE CORONER: Might be easier for you to have a hard copy?---Yeah absolutely. I'm sorry I'm not very good with this flashing through the screen, your Honour.

MR COLERIDGE: Not much in the way of remarking. And I'll remove the Post-it notes. Thank you.

THE WITNESS: It's at page 168.

MS MORREAU: Yes, under the heading "Bias in favour of Rolfe"?---Yes, that's correct. So how – how that became to be included was after reading – after my report being provided to Mr Anticich and the Coroner. Mr Anticich contacted the Office of the Coroner. And requested that those – that that paragraph, in its entirety – consideration be given to including that in – in the draft report. And the Coroner advised that he thought that was appropriate. And so it was placed in there.

Yes, is that the subject heading be included?---Yes.

Rather than the contents?---The subject heading and - - -

(Inaudible) yours?---No the content is not mine. The content is actually Mr Anticich's as well.

I see. So Mr Anticich led to the addition of material. But it's your evidence that there was no deletion from your report as a result of any - - - ?---Absolutely not.

- - - consultation with the Northern Territory Police?---No. The only change was that one. And again, not to me, directly to the Office of the Coroner.

Thank you. Now you've made some conclusions and considerations about changes to OSTT training?---Yes.

“To have a greater emphasis on de-escalation and tactical withdrawal.” Do you recall that passage in your report?---Could you tell me what paragraph please?

It's page 119 to 120?---Thank you.

I'm not going to take you to the detail of it. But I wondered whether you – whether those opinions are your opinions? That comment and recommendation?---Page 119?

119?---Yep, yeah.

And then it finishes over the next page?---Look the – those comments are my comments, but they are probably taken from my reading of a document produced by Queensland Police. And I think I identified in the report - - -

You referred to that, yes?---That on reviewing this material, and reviewing that document, there were some similarities in relation to the issue such as de-escalation and the like.

Yes, and so to do that, you're reviewing the training materials yourself? The Northern Territory Police Force training materials, in order to form this – those (inaudible)?---I probably based mine more on the use of force reviews, and everything else I reviewed. Not so much the training materials.

Is that from Mr Barram, and his report, in the criminal proceedings?---Yes.

Did you ask Mr Barram his views about the lack of emphasis on de-escalation and other alternative measures to avoid uses of force?---No I didn't. As I say, it's a consideration. I found the, as I say, in my experience, there was quite a lot of commonality between some of the outcomes of the Queensland review and the issues we were - - -

And you're speaking about a Coronial inquiry that was into police shootings of mentally ill persons I think?---I referenced the document. It's the “QPS Violent Confrontations Review.” It's an open sourced document on the internet.

Thank you. Do you know whether your commentary about that, in particular, has been taken up by the Northern Territory Police Force?---Look I'm not aware. I think Mr Smallpage will probably be – give evidence on that.

Thank you. Moving to complaints, and I appreciate that there are others who will speak of it, so I will try to be as brief as possible. But clearly as part of your responsibility in the Coronial investigation, you did take on board, identifying any disciplinary breaches that you considered were available from the evidence that you gathered, correct?---Yes.

And you referred those to the Professional Standards Command, where suitable?---Yes.

And it was also part of your purview to identify any systemic failures that might be revealed, particularly given the extent of prior matters we have here in relation to Mr Rolfe?---Yes.

Now, you've obviously made recommendations for processes of detection of concerning behaviours and supervision of officers to be improved. Clearly it's a very complex area, correct?---Yes.

And you'd expect that such improvements would take into account, comparative analysis, academic analysis, to try to come to a position about best practise in dealing with police misconduct?---Yes.

Now, similarly, you'd expect that such processes, to be effective in the Northern Territory, would also need to identify and address the development of racism or racist attitudes amongst the force, correct?---Yes.

Now as part of your investigation, you found limited records on Mr Rolfe's Mr Career profile, reflected of that extensive past conduct. Can I just ask, Mr Career profile is an internal record for Northern Territory Police Force?---Yeah, so My Career is – the acronym is quite suitable. It's a system used by Northern Territory Police, I suppose more as a career development system.

Tool?---So at each level, a direct supervisor, every year, will have a conversation with their subordinates in relation to their – some elements of performance, but it's not a performance management tool. But certainly, you know, what is their career progression, where do they want to go. So at Commander level, obviously, either the Deputy Commissioner, Assistant Commissioner, or Commissioner meets with you to discuss what your performances have been and those things.

Is any component of that supposed – ordinarily, by protocol, required to include any negative aspects of a person's career?---Negative performance, yes.

Yes?---And how you would go in around addressing that. So that's in a, I suppose not a disciplinary space, or not a – it's very informal.

Can I ask why not? You've made some commentary about the difficulties, where there are records kept in different areas - - - ?---Yeah, so - - -

- - - do you think Mr Career is the place - - - ?---No, I don't - - -

- - - all of these matters should be (inaudible) - - - ?---I actually think - - -

- - - and if not, where, sorry?---No. We have a system called IAPro which sits within our Professional Standards Command.

I see?---So that is a system where everything to do with the issues you're talking about in terms of discipline, performance management – it's a hard one, because it

sits in PSC, so it does sort of sit in a discipline, but performance management, even though it might not have a disciplinary outcome, can still sit in there. And certainly prior to leaving the police force, my view is that – that is the system, which is better used, because you can then have everything in it. So I think about prior to leaving, we established a – a failed prosecutions model, just to look at why some of our prosecutions at the low level were not – failing. And as a result of that, where either practices or poor results by members, they would be given a blue team reference to their supervisor. Identifying that in this particular case, this matter might have been lost because notes weren't taken, or whatever. It didn't – it wasn't a breach of discipline, but it was remedial action. So we're actually then recording remedial action. That, in my mind, then is – is a rough basis, of how you could then start to get a picture of a member.

I see. And that – that process that you've just described, is that one where – which has been incorporated into the IAPro system?---IAPro is a system set up for that. So traditionally it was bought to manage our complaints against police. But it has the capacity to do that. Or it certainly did at one stage. I don't know if it still is.

Is it held only by Professional Standards Command, or is accessible by, for instance, supervisors - - - ?---It can be made accessible. At the moment it isn't – so how it works is, if I can be given a link into a particular part of it. So that the integrity of the system is maintained, but links can be provided to access it. And I'm sure that access can be broken down to other areas.

You'd agree wouldn't you, that if a sergeant or senior sergeant, or even higher up, is actually reviewing a members conduct, in relation to a complaint, that access to IAPro to know the history of any complaints or issues that have been raised in the past, should occur, yes. Sorry, you have to verbalise your answer?---Yes, yes, and I – from – look it's been a while since I've actually had to review a complaint. But I think my – my – at the moment, I think where there is a disciplinary history, it is provided. But we have to be careful to, that it is a history, and is considered, but it isn't necessarily – shouldn't form the outcome, in terms of – but where it's relevant, it can be provided by PSC.

All right. Do you know whether there's any requirement for any officers reviewing conduct of their inferior officers, to actually look at that history? To access IAPro?---I don't believe there is. I'm not sure what the General Order says. It might say to do that, but I'm not sure.

Thank you. Now, from what you've set out in your report, you seemed to have identified a number of systemic factors that may have hindered the forces review of use of force incidents and complaints. I'm seeking your opinion on the most significant ones. I have some ideas from your report, but can I suggest one at least, that is, the statutory time limitations in the Police Administration Act - - - ?---Can you – can you take me to the page? Sorry I'm - - -

Look I'm – this is a summation I'm drawing - - - ?---Okay.

- - - from the review that you undertook in your report, of the past incidents involving Mr Rolfe. And what outcomes we see, coming from those – those issues. Well, the first question then is, did you, yourself, identify some systemic breakdowns in dealing with complaints Mr Rolfe?---I'm not sure if I actually looked at the outcomes and resolutions of those complaints, to be honest.

You made recommendations that it should be reviewed, but you didn't specifically form any opinion about - - - ?---No - - -

- - - why there might have been some breakdowns?---Yeah I didn't go – go in to that extent.

We might make some submissions about that then. Your – in your report, you've produced graphs. It's at pages 29 to 31. I don't want to take you to the detail of that, but I'm just asking how you produced them. Is that from the IAPro system that you were just speaking of?---No, I have to again thank Senior Constable Kingston for the laborious task, and I think I addressed this in my – around the use of force about how records and things are maintained. So, what I tasked Mr Kingston to do, at the request of the Coroner, was to try and build a picture of use of force, and put some rigors around it to give an indication to the Coroner of what that looked like. So all of that is manually obtained from use of force data.

I see, so he had to physically take a very lengthy process of interrogating that information, in order to reach the graph data with (inaudible) - - - ?---Yeah, and further complicated by, I think as it's been given in evidence previously, that use of force, when you look at PROMIS, you may not be the person who is the user of the force, but you might be tagged in the PROMIS job if you're present when the force is used, so - - -

So it's not completely - - - ?---It's not push a button and out comes a wonderful report. It's very laborious, and I think I've put in there that there is – that that should – there's a system to allow that to happen, should be looked at.

Now Mr Pollock indicated in evidence in this inquest, that he thought that the IAR Program could be utilised to greater effect as an early intervention tool - - - ?---Yes.

- - - to identify trends concerning one particular officer, or even a cohort of officers. Do you agree with that?---Absolutely.

And you'd also agree that that would be a very useful thing for the force to have accessible to it?---Absolutely. I mean it can be – yeah, look it's a great way to be across those things. And even if, just to give you an inkling, or an opportunity to address things before they get to that critical point.

Now that would identify perhaps, high numbers of use of force, or recourse to use of force options, correct?---It would depend on what parameters you put around it, but even if you just – you'd have to build the system to look at that looks like. So it might be that you have an officer who has 30 use of forces, and then that give – you know,

if that think that's a high number in a week, for example, depending on what their duty is, you can then go in and look at those things. So I think it provides triggers for you to then look - - -

I see, a flag like - - - ?---A flag, yeah. I think Scott used the term "red flag" in his evidence. So I think, yeah, it's a red flag system.

But that – obviously, that process won't occur unless there's a reason to look into that particular officers that's identified by someone?---I'm not sure how IAPro intertwines well with other systems. But where you – and I'm not sure of the technology, so you have to excuse me. In the perfect world, what you would probably have is where the use – the – that IAPro system talks to the use of force reporting system. So you would have those reports there, and then you could literally, you know, so if we print out, you might have those numbers, and then if you've got, you know Dave Proctor's had 25 use of forces in three days - - -

So that there's a prompt of some kind?---There's a prompt, yes.

I see. Would that program identify things such as the development of racist behaviours, for instance?---If they're reported, yes.

Do they need to be reported under that specific complaint mechanism that deals with, you know, equity, quality - - - ?---It depends on the nature of it - - -

- - - (inaudible) - - - ?---Equity and diversity policy is very much an internal structure. Obviously, if that is, from my understanding, prior to I left, if that was an external complaint made, then obviously that sits under the Professional Standards Ombudsman type situation. Unless it can be dealt with by the complaints resolution - complaints method.

Now, you noted at the time of your report that not disciplinary process had been applied to Mr Rolfe except for his suspension, upon being charged, at the time of your report?---Yes.

And are you aware - - -?---I think it was no disciplinary outcome, not no - - -

I see, no outcomes?---Yes.

Correct?---Thank you.

Thank you for that correction. Are you aware now of the outcomes in relation to Mr Rolfe?---No.

Are you aware now whether there has been any disciplinary consideration in relation to other members of the IRT who attended on 9 November in Yuendumu?---No, and as I have been out of the police force for 12 months, I wouldn't expect to be.

What about the supervisors of Mr Rolfe? Do you know whether there has been any?---Same answer, as I say, it's now been 12 months since I left the police force and I am not aware if any has been taken or not.

And my final issue to raise, Mr Proctor, is you acknowledge in your own investigation that since your investigation of issues of systemic racial bias was rudimentary, correct?---Yes, absolutely.

And of course it is anticipated that others may be in a better position to investigate those matters following the evidence of the criminal trial and before her Honour in the Coronial proceedings, correct?---Yes.

Nevertheless, you noted at page 167 that there were indications from your review that the deployment of the IRT and the actions of the IRT in the community of Yuendumu did discriminate or disadvantage in a systemic way, Aboriginal people? ---Yes.

Would you agree then that there are indications of systemic discrimination or disadvantage seen in the decisions of the police after the shooting, namely the dragging of Kumanjayi, not using expired air resuscitation techniques in relation to him, his resuscitation, not engaging with the community or Kumanjayi's family when they were outside the police station and the ruse that has occurred in terms of misleading the family and community about his condition. Would you agree that there are some indications of systemic discrimination or disadvantage in those actions as well?---No, I don't think I can agree to that principle, no.

You noted in your report that improved cultural awareness training had been certainly a focus of the Northern Territory Police Force including the establishment of the community resilience and engagement command. Would you agree that whilst improved training of new recruits is an absolute must, it would be equally important to improve the cultural competency of members of the force who have been in there longer?---Yes, I think in my report one of my considerations is that an induction package be developed for each station and I base that on my experience when I first joined the police force I think I was 22 when I went to Harts Range. My background I was born in the UK, my parents emigrated to Australia in 1981 and I moved to the Territory in 1987. I had never met an indigenous person. In 1990 I transferred to Harts Range and had the great fortune to work with Kumanjayi Brookie who was, at that time a police tracker and the - - -

So you arrived at that station as a young recruit and so what process did you go through to try and develop the sort of - - -?---Our training - I recall our training - it's strange the things you remember - was from a gentleman named Mark De Graf and pretty much consisted about the kinship system. With Lindsay I think - to me it's - and I don't want to sound dismissive - it was common sense that my upbringing was completely nowhere near anything that I was experiencing in the location of Harts Range, and he was a great mentor. He was a strong leader in the community and through his guidance and advice I think you got an appreciation of the difficulties of living in community, the benefits of living in community. Very foreign to me as to,

you know, I mean in all the community that I've worked and particularly at Harts Range speaking to some of the young girls there and saying, "You know, what's your inspiration for your future?" And then I think that's when you start to get an understanding of how important the land and the culture is.

Well, it's utterly important isn't it?---Yes.

To - for police officers going into these communities to be able to have any real positive - - -?---And so for me, I suppose, that was my consideration of, we have - I was part with Commissioner Chalker who was Commander Chalker at the time, in the development of the ALO Program, he was in - he was Assisting Commissioner in Alice and I was in Katherine. And we saw it as a great opportunity for members of the community who might not want to be police officers or because of the pressures there, to assist our officers in getting a greater understanding and I suppose that is where my recommendation there comes from and I'm aware that the correct - we're still developing that - or might still be even developing that now. I think there's - the broader stuff that you can rain to recruits but then when you go into community, to me the idea of a fit for purpose induction package - and not, you know, fill out your (inaudible) receipt book or whatever but about who is who in the community, what are the community issues, what is the history of the community? So in this inquest there's been lots about Yuendumu and I understand that but when you go to Borroloola there is historical history and then there is more recent history that still raises itself in terms of terrible events that occurred within the community itself. I think that is where I was coming from.

Thank you. I won't tax you on all of the details of that?---Yes.

Because obviously a whole lot of complexity and detail there and other witnesses are also speaking of. My question was really designed to try and capture officers who may have been officers for some time, who have missed the benefit of those more improved programs of cultural awareness. Would you agree that there might be a benefit in rolling out cultural awareness training to existing members of the police force?---Yes, and I think you have had evidence to that already, yes.

And then finally, would you agree too that issues of racism, whether systemic, conscious or unconscious, are - is something that requires continued repeated messages and attention brought to bear in training, in continual training and in continual vigilance from supervisors to check against negative attitudes and experiences occurring?---Yes, I think you have to have systems in place to ensure that when those things start to occur or become present, that one, you can identify them and two, that you can assist, whether it be through development or whether it is through some punitive measure, depending on the level of it.

Thank you, Mr Proctor. Thank you, your Honour.

MR BOE: Your Honour, there is one issue I wish to interrogate if I may?

THE CORONER: Yes, Mr Boe.

XXN BY MR BOE:

MR BOE: Mr Proctor, my surname is Boe and I appear with Ms Boe for the Walker, Lane and Robertson families?---Good morning.

You would accept that when a police officer is charged with the offence of murder, that is probably the most serious investigation that the police force would be undertaking?---I think any - I think murder is a - any serious investigation but certainly from the police force perspective, yes, because it isn't just about the offence of murder it's also about where we are now, the systemic issues that come - the systems issues that go along with that.

I guess I am focussing on the need for there to be utter integrity in the way in which evidence is put together in the prosecution of a member of the force?---Yes.

To that end, when a person is charged - a police officer is charged with murder, of particular focus for the jury is the state of mind of that member, correct?---Yes.

And particularly looking at the defence under s 146B which brings into it the issue of good faith and reasonableness of the actions?---Yes.

Critical to placing evidence before the jury on those issues is evidence of the member's previous actions and statements which may inform an assessment of the state of mind?---Yes.

And you would be aware, for example, of the desire, at times, for prosecution to place evidence of tendency or coincidence before a jury?---Yes.

In this case we are aware that in January 2022 an application was made in respect of some evidence concerning the issue of tendency. You are aware of that?---I believe so, yes.

Yes, for example, as I read the trial judge's ruling, there were two text messages. I think one was an Instagram post but there were two communications that were put before the trial judge to determine their admissibility on the issue of tendency, correct?---If you say - I'll have to say I haven't read the trial transcript, yes.

Take it from me that there were two - - -?---If that's - that's what it was, I'll agree, yes.

One matter that has arisen in this inquest is the circumstances in which there were other evidence that may be admissible as tendency that was not argued before the trial judge. Do you understand?---Yep.

You spoke - and I won't adopt your word, that part of your assessment is looking at failed prosecutions. I'm not suggesting that an acquittal is a failed prosecution, but it is of interest to the family as to how it is that not all of the evidence in the hands of

police, whether they be Coronial or criminal investigators, may not have been considered to be placed before the trial judge for argument as to admissibility. Do you understand?---Yes, I understand what you mean.

Because we do know that the – one of the reasons given by his Honour was the temporal connection between the events relating to those text messages and the events of 9 November. Do you understand?---Yes.

What we have now seen from work done by counsel assisting team has uncovered quite a few more communications. You're aware of that? They've been referred to as racist and the like?---Okay.

You would have seen reports about that?---Yes.

I'm not as interested in the racial aspects of it or the derogatory aspects of it, but there are – there are indications that from these text messages that there were actions and thoughts held by Constable Rolfe which bear greater examination, for example, his use of force in previous policing actions. Do you understand? What I'm having difficulty finding, because not all statements that pertain to this issue, for example, from Mr Kingston, you said earlier that Officer Kingston went thought the phone for the Coronial team to look at relevant evidence. You did say that just earlier, didn't you?---To look for information – I shouldn't say evidence, information that would be relevant to the Coronial, I think is what I said.

Well, whether it's - - -?---Information or evidence, but yeah relevant to the Coronial, yeah.

Sure. I guess the difficulty I'm having at the moment and we'll pursue this in other ways, is that as I understand it, the digital forensic examiner, William Pham, provided the extraction of what was on the phone in a readable format on 19 October 2020. Does that generally accord with your recollection?---I can't recall, because I don't think the digital extraction was provided specifically to the Coronial Inquest.

Well, can I just stay away from this distinction between Coronial and criminal just for the moment. And there reason I do that, before you roll your eyes, is that we've been provided an updated crime homicide and serious investigation - - -?---Yes.

- - - general order which has recommended – well, which has stated that there should now be one commissioned OIC responsible for both the criminal and Coronial aspects of an incident?---Yes.

Okay. And there's great merit in that, if I may say. So, if we get to just ensuring that we have a process going forward that things don't fall through the gaps, as it were. So, when you make the distinction between Coronial and criminal, I'm asking you to look ahead, in a sense, to assist us, given your experience and knowledge of how police obtain information. What we don't have at the moment is any reliable record of what police provided to the DPP as being the relevant material obtained to examining the phone. Do you understand?---Yep.

You see, with the dates, what we've got is that 19 October 2020, which is more than 12 months before the commencement of the trial, it's about 14 months. What we don't know is what information was provided to the DPP by the Northern Territory Police. Have you examined that issue at all?---No. That was very much at the time in the criminal side, so I think you'll see in our report, we – I don't think we had full access to what was provided in the final brief.

Yes?---When I say "access", we had access to - both teams had access to the information drive, so they could see what we were doing and we could see what they were doing, other than of course, the reports. But in terms of your question there, no, I don't have visibility of that.

The families and I guess the community in which they live and the entire Indigenous community may be perplexed, evidence which seems to be potentially admissible was not used at the criminal trial. Do you understand? How do we address that? I well appreciate as a lawyer that the process of inquiry in an inquest is different in determining the admissible evidence at a criminal trial. And we have to accept that that system is one where the criminal trial will precede, usually, an inquest. So, it may not be of any surprise that some evidence comes out after a criminal trial?---The difficult - - -

MR FRECKELTON: I'm not sure where Mr Boe is taking his line of enquiry with respect to your task in determining (inaudible) circumstance of death and recommendations as to how the criminal justice system might work differently. I'm just not sure where this line of enquiry goes, your Honour. It seems to me it's traversing how the prosecution is run and what friendly decisions they did or did not make.

THE CORONER: I think it's more on the investigation side and the sharing of information, but I'm not sure.

MR BOE: Your Honour, we accept that nothing can be done to traverse the verdict and none of my questions are intended to promote a submission to that effect. The matter of concern is that there is evidence which would - - -

THE CORONER: How – sorry. Yes, I understand what your concern is, but what are you seeking from this witness in relation to that?

MR BOE: Yes. I'm seeking from this witness whether the recommendation or the clause 11 of chapter 4 of this report sufficiently addresses - - -

THE CORONER: Which page is that? Do you have any idea?

MR BOE: It's at page 32 of 42. It's not this man's report, it's the report that was tendered two or three days ago - - -?---Okay, thank you.

- - - of the changes to the investigation.

THE CORONER: Right, so the new proposed general order.

MR BOE: (inaudible), yes.

MR COLERIDGE: The draft general order.

MR BOE: And I anticipate that submissions may be made by the police interest that this had been adequate step to address the issues that have been revealed in this Inquest and I'm wishing to ascertain from this witness his view, given his experience and his knowledge of the entire brief, as to - - -

THE CORONER: So, it's clause 11, chapter 4. So, you need to actually look at the chapters - - -

MR BOE: Chapter 4.

THE CORONER: - - - and page numbers?---Which dot point is it, if you don't mind me asking?

MR BOE: It's page 32 of 42?---Yep. Chapter 4.

Chapter 4, clauses 10, 11, 12?---Okay, yep. And sorry, what was the question again.

The question is this, in the following page, you will see that there's a structure - - -?--
-Yep.

- - - in a diagram form. There is a challenge when there are different responsibilities, whether it's headed by one officer in charge when the police force continue correctly to distinguish between criminal and Coronial aspects of an investigation. So, I'm not cavilling with that as a concept. What I'm concerned about is that this need for time sensitivity in relation to criminal prosecutions and the need at times to silo particular evidence which is of no use in one or the other. I understand all that. Do you think that there is enough known and thought by the people you worked with and who are in the system still, by merely having clauses 10 to 13 and the structure in 16 to ensure that all relevant and potentially admissible evidence is provided to the prosecution agency, and how do we ensure some transparency on review about that so that you did not attract the criticism that even though there is a system which has resulted in a verdict, that the Warlpiri Community have still not seen, in their eyes, any justice in the outcome?---I'll probably break my response into two bits, if that's okay. I can't provide you any enlightenment in relation to what evidence was provided to the DPP or then, or – or decisions around what was to be put forward or what wasn't. In relation to these dot points, I think this was – and I think I address it in my report. This was a very unusual circumstance. And a very unusual structure of having two separate silos with two separate officers in charge.

That's even leaving aside personality differences?---Yeah, yeah forget the person. I'm just talking about the structure. Because normally – I wouldn't say normally, in – this was a unique situation, so we don't have a lot of these types of incidents, fortunately. And I'm not – but I think, what occurs then, is someone has to be the de-confliction point of, and understand the priorities of, as you say, you know, what is – what is going to be produced. What's in the Coronial, what's in the criminal. I suppose I use the example of I think the statements that were taken or weren't taken from the criminal perspective, that might not seem important. I'm talking about commissioned officer's statements, but from the Coronial, it's extremely important. Because it goes to the integrity of the investigation and integrity of the Officer of the Coroner.

Yes?---I provided some comments in relation to that from - - -

I see?---Experience. But it's about the role of any officer in charge, whether it's both, or whether you choose to separate it out. But both if you are covering both these things. Is to prioritise those lines of enquiries, and those evidence. I think that's the key thing. Is understanding your role in relation to the criminal investigation, and also the role in relation to the Coronial investigation. I – I don't know if it answers your question, but I think that's the important part.

Yes. You haven't undertaken any review. And I know you've now retired?---Mm mm.

Do you know if any review has been undertaken to see what – I'm putting to you that from what I can see, there's certainly evidence of a very similar character, namely text messages coming from the phone, which does not seem to be placed before the trial judge. And there are several explanations for that I'm sure. But to the extent, has there been any examination of what in fact was provided to the DPP - - - ?---My short answer is, I – I don't know. Certainly not prior to my – my retirement. And I don't know if that's been – has occurred. Because obviously the trial - - -

Occurred after you left?---Occurred after I left.

I understand. I think Dr Freckelton wishes to – I'm inviting you to – no, I'm inviting to - - -

MR FRECKELTON: Your Honour, in our submissions, this is really going beyond the parameters of what can (inaudible) be looked at by the court, the interaction between police and the criminal prosecution team, at trial, is not something that reasonably falls, with respect, in the scope of the enquiry. We've held off interruption to my learned friend. But one, the issue of itself, is beyond the proper scope of enquiry. And two, this witness cannot assist in it.

THE CORONER: Yes.

MR BOE: Your Honour, I respect that, and I will talk to Dr Freckelton, and perhaps see whether Mr Smallpage might be in a position to – or somebody else might be

able to provide that. And why I say that, I'm not acknowledging and – but not arguing against the impropriety of re-examining the trial process. As your Honour identified, it is a matter of concern for us, that the systems in place will ensure that where there was evidence that some texts were considered, and some were not - - -

THE CORONER: Look, I suspect, it might be able to be resolved if you have a discussion with Dr Freckelton, in relation to the evidence that's going to be given by Mr Smallpage. I don't know, but - - -

MR BOE: Yes, I understand.

THE CORONER: - - - if it's a live issue after that, then we can see whether it's something that I need to consider further.

MR BOE: Yes, thank you, your Honour. Those are my only questions.

THE CORONER: Yes, Mr Boulten.

XXN BY MR BOULTEN:

MR BOULTEN: My name is Boulten. I'm appearing for the North Australian Aboriginal Justice Agency, Mr Proctor?---Good morning.

In your report you touch on the wicked problem of racism?---Sorry, Mr Boulten, could you take me to which page?

Yes, it's page 168?---Thank you.

Where you described "Cultural bias and institutional racism as being complex, if not, wicked problems." Okay? And your opinions about racism and institutionalised racism are very helpful, and one of the few formal pieces of evidence gathered, or opinions gathered to assist the Coroner in relation to this. But I was listening to your evidence when you were answering questions from Ms Morreau, where you tended to limit your assessment of racism and the effect of racism, to events that occurred up to the time of shooting the deceased, but not after he was shot. Now I want to ask you a few questions about the period after he was shot. Before that, Mr Proctor, when you took over from Mr Pollock, and read his draft reports?---Mm mm.

Did you notice that he had in his draft, or at least in one of them, a segment which was headed – excuse me, "The Policing Culture in Alice Springs"?---Yes.

And to which he expressed the opinion in the draft, that by November 9, 2019, the policing culture in Alice Springs had degenerated into a state where unacceptable police behaviour was allegedly being condoned by supervisors. And there was more of (inaudible) - - - ?---Yes.

- - - do you remember - - - ?---Yeah, yeah I remember it well.

- - - but you didn't put it in your report?---No.

You didn't cut and paste, nor did you address the policing culture in Alice Springs?---Not in those words. I believe I addressed it – so at the time that draft report was written, by the time I wrote this final report, we'd done a significant amount of work around the policy. So example, the whole IRT deployment, and failure to comply with their SOP's or most, at every level. So in the use of force audits, supervisor audits, and then also including some of the information Mr Pollock had referenced in relation to the failures of the joint – the IMT in Alice Springs, and the command management teams. I think in my mind, that represented a broader example of the failures of – the issues of the culture in Alice Springs, and failures of managers to address those things.

Do you agree that by the time of the shooting, policing culture in Alice Springs was entirely unacceptable? Was in many respects unacceptable?---I think – I think elements of it were, yes. I think it's hard to say the entire culture of policing in Alice Springs. Because that – that particular issue relates very much to the IRT. I would say though, based on my findings of the failures to follow policies, the failures to undertake appropriate supervision of use of force, that the culture was inappropriate.

Mr Anticich gave evidence here the other day, described the inability of the Alice Springs supervisors of Mr Rolfe, to deal adequately with quite regular use of force complaints, generated by Aboriginal people, mounted by NAAJA, was, I think his words were "An abject failure", and "Corrupt." Did you read about that, or hear that evidence?---Yeah I heard about the evidence.

Yes?---I agree with the abject failure, I'm not sure around his comments about corruption, as I'm – I haven't examined all of those things. Certainly on the elements I examined in terms of use of force, not necessarily complaints, I would say they were – there were examples of abject failures on the part of supervisors.

Yes. So the inquest has received quite a lot of evidence about individual aspects of NAAJA's complaints about Mr Rolfe. And of course, you know, that the Coroner has received evidence about racist attitudes that he obviously held at relevant times, including at or about, and indeed after, the shooting of Kumanjayi Walker. That being the case, his policing methodology and his exercise of use of force was probably in part a result of a number of things, and I will go through some of them - disregard for the Aboriginal people he is policing, do you agree with that? I can take you to some of these comments?---No, I am just not - yes - look, I think on the evidence we've seen, I would agree with that, yes.

No, well you didn't see it though, did you?---Look, I've seen some of the footage and I've reviewed some of the footage as part of the Coronial inquest and on that I would agree, yes.

But you didn't see the racist comments when you were wrote your report?---No.

Yes, and another motivating factor, part of his essence, if I can be so unscientific, was the fact that he had had military training, do you agree? A "get your man" focus driven act with one objective type of policing, right?---I don't know if I can - with any great gravity say that that - that they both correlate. I accept that he had had military training.

Yes?---I don't know if the military training was the sole factor in his essence as you have described.

No, I am not suggesting it was. I am suggesting it might have been one of the factors that influenced the way he conducted himself?---I think that's hard for me to comment on. I did make mention in relation to elements of militarisation in policing but I don't now if I could fairly answer that.

One of which, at page 136 of your report, is that as one observer has noted, "Former military personnel bring important skills like teamwork discipline and proficient use of weapons but it is not easy for them to transition from warriors to guardians" right? ---Yes.

And that might well be the case with this young man, right?---I think that assessment I would agree with. I am not sure about the essence of - - -

And do you understand that during the time that he was acting as a general duties policeman - not as an IRT officer, but as a general duties policeman here in this township, he was regarded highly by his supervisors because he was such a reliable "go get 'em" uncaptioned sort of bloke, right?---Yes, I understand that.

And the fact that he was a racist, was known by his supervisor - at least the IRT supervisor - do you understand that?---Yes.

And the fact that he used racist and derogatory terms was known by at least a number of his general duties colleagues, right?---Yes.

That his one-time girlfriend, also a police officer expressed the view and stuck to it under cross-examination in this inquest that it was actually quite common for the people that she dealt with at a rank and file level, to hold racist views like her boyfriend did. Do you understand that?---Yes.

Okay, so that is corrupt, isn't it? That is a corruption of the police force, isn't it?---I don't know if I would strongly use the word "corrupt".

Well, why not? I mean corruption is not just taking backhanders. If the police who are arresting Aboriginal people with excessive use of force which is deemed to be acceptable are actually racists then there is something seriously wrong with policing in Alice Springs, is there not?---I think the proposition you put forward was corruption of the police force whereas a lot of the information you just provided is specific to Constable Rolfe.

The problem is - - -?---I am not disputing that the systemic issues in the police force, some of which you attribute - some of the issues you attribute to Constable Rolfe may not be present in the police force but I don't know if they are to the level that you have put forward there in terms of corruption.

Mr Proctor, one of the problems is that police in authority, one after the other, deal with these issues on the assumption that it is not widespread and that action should not be understood as necessary because it's bad apples that you're talking about? ---I'm not saying that action shouldn't be taken. I'm not saying that it isn't - what I'm saying is that in the information you provided I don't have evidence that that isn't - that every police officer participates or undertakes their duty in that way.

So, Mr Proctor, the part of the dealing with institutionalised racism, should there be any, is for the police service itself to recognise it, right?---Absolutely.

And to admit to it, right? And if no admission is made to it what do you think is likely to be the effectiveness of any attempts to clean up racist elements and racist attitudes in the police force?---I think there's a step before that which is systems in place to identify it, address it and perhaps then provide that acknowledgement.

Could you please explain how - how the police command can identify racism if no-one owns up to it?---I don't think you're going to get too many people to admit to being racist. I think there's quite a fair amount if you look through history and issues in other countries where people won't admit to being racist. I think it's about having systems in place that identify some of those behaviours. Similar to where we talk about the red flags, the early intervention and I think it is an education process. It has to be that people identify those things, acknowledge that they're wrong and you have a system which constantly you have systems in place which make that a constant awareness within the workplace or within the police force.

Going back to the facts surrounding the death of Kumanjayi Walker?---Yes.

The failure of the police - in fact, the decision by the police not to tell his family that he had been unable to be resuscitated, you describe at page 104 as an appalling decision?---No, I think the reference I make - I don't normally use emotive phrases - or try not to use emotive phrases, that was one that I - I think that is in reference to the sequence where is it Mr Edwards, or the contact is made with a family member, Mr Robertson, to advise him that medical is still being undertaken and then several hours later he is contacted to come to the police station to identify Kumanjayi.

Well, whether it is failure to report?---Yes.

Or whether you are considering the broader deceit?---Yes.

The deceit was appalling, was it not?---I think it's hard to say that it's appalling.

You did?---No, I said the contact to Mr - - -

Well, let's have a look at what you said. If you could go to page 104 please?
---yes.

Under the heading "Comments and Considerations" you set out recommendation 19 of the Black Deaths in Custody Royal Commission?---Yes.

And the Northern Territory Police General Order Deaths In Custody Investigation of serious and/or fatal incidents resulting from police contact. And you accept that pursuant to both, "Notification to a family representative of a deceased, where appropriate, and the relevant Aboriginal legal service or other appropriate community organisation as soon as practicable is required", right?---Yes.

And then you state that there was eight hours between the deceased's passing until Mr Robertson was informed of the death, right?---Yes.

And you said that under normal circumstances that wouldn't be considered as soon as practicable, right?---No.

Then you point out that this wasn't a normal situation, right?---Yes.

And you speak of Acting Assistant Commissioner, as he was then, Travis Wurst, who made the decision to delay the notification and his concern about the safety of the police and health staff who were inside the police station, right?---Yes.

You then said, "Whether the decision to delay the notification to the family was right or wrong it's difficult to reconcile giving the competing interests of public safety and obligation to advise the family, the rationale of Mr Wurst is one that indicates had considered both factors and made the decision that he believed was best to prevent the further harm to the members of the community or those inside the police station." Then you said, and this is the relevant part that I was referring to, "Unfortunately, the way this decision was then executed can only be described as appalling. The failure to provide any response to enquiries made by family members at 23:05 hours followed by police contact and advice to family members that Kumanjayi was still receiving treatment at 7 minutes past 12:00, followed by police contact to a family member who's requested to attend the police station and then is told that he'd deceased demonstrates little consideration and compassion to Kumanjayi's relatives." Right?---Yes.

So that's what you thought was appalling, right?---The bit that I was referring to as appalling was actually the second part, not the first part.

That being what? The second part?---The second part in terms of "The failure to provide any response to enquiries made by family members" following - and advice to the family members that medical treatment was still occurring at 00:07 hours.

And it wasn't?---And it wasn't.

Yes?---And followed by the "Police contact to a family member who is requested to attend the police station and on arrival is advised Kumanjaya Walker is deceased."
And then is asked - - -

Sorry, you think that's the only appalling part that he was told at 4 o'clock in the morning?---I think that is the significantly appalling part.

And what about - what about pretending that he was still alive? Do you think that was appalling?---I think in the evidence provided by Mr Wurst that that was one of their considerations. I think possibly other things could have been done but I wasn't on the ground. I don't think it would have - was great practice and it certainly in respect to the family is something I wouldn't want to happen if I was a member of that family or if that was in my family.

What about the deceit of pretending that Kumanjaya was being airlifted to Alice Springs for treatment? How would you assess that particular deceit?---Again, I think any - it's hard for me to answer those when you - I'm not the person on the ground. In the person reviewing it I think in a perfect world you would not do that.

Well, we all live in an imperfect world?---In an imperfect world, yeah. I think it's whether or not the rationale that they have provided in relation to the reasons for it is acceptable.

Well, you see, you've offered opinions, you've come along here as the man who's looked at everything up to the point that you issued your report and you've offered opinions. Here's your chance to express your opinion?---Yeah.

Put your colours to the mast, Mr Proctor. What do you reckon?---Look, I think certainly in terms of appalling which is for me a very strong word, when I read the extra - the information in relation to the contact, and I think it's Mr Robertson, is that correct?

Mr Robertson?---Yeah. To me I - in my shoes I just think that would be absolutely devastating. You're being told that he is being subject to medical treatment and then you're contacted and asked to identify a deceased person. I think that is completely appalling. That should not have occurred under any circumstances.

Well, I've directed you more specifically in the last question and here's your opportunity comment about what you think about the deceit of taking him in an ambulance to the aerodrome, pretending that there's an injured man in it, putting him on a plane that's got the Royal Flying Doctor Service badge on it and leaving everybody to believe that he was on his way to Alice Springs to get treated. How do you think - what do you think of that?---I think the deceit of the community perhaps was unnecessary in certain circumstances. I don't know if I would say it's appalling.

It's a mild criticism?---No, I think there's - well - - -

It sounds mild?---Yeah, I think when you take into consideration the situation the officers involved were perceived - I'm not saying it's completely justified, there could have been other things, but you have to consider that in it as well. In hindsight would I consider that to be undertaken again? I would certainly say no for all the reasons you've quite rightly raised. Whether they considered those at the time I don't know.

The officers concerned, Mr Wurst and Mr Nobbs, in particular, have offered complete explanation about why and they have expressed the opinion that there was not one single Aboriginal person that was in the community that night that they could possibly trust with the truth because had they told even the ACPO the truth there would have been devastating and catastrophic consequences to human life, to property, the police station, not just in Yuendumu, according to Mr Nobbs' views, but a domino effect throughout all Aboriginal communities in the Northern Territory both in the desert, Top End and throughout. I put to you, for your consideration, that such an attitude is indeed an attitude that is based on race. That is, it is ascribing to every Aboriginal person the same characteristic, namely, it's a threat to the police, every single one of them, tarred with the same brush. What do you say about this attitude?---I say from the - from my knowledge of their evidence and what was in the brief, those views were based on the experience of those officers.

Yes. So the fact that someone has experience in an Aboriginal community you think it justifies in your view a conclusion that you cannot trust an Aboriginal person with sensitive information in the context of the developing situation such as it was on the night? Not one?---I wasn't there on the night. In relation to my own personal examples and again I wasn't involved in - on the night and I don't have an understanding of who or what was in the community so it's hard for me to say that that was - that I would say I wouldn't trust Aboriginal people. As I alluded to previously my experience in remote communities quite often I only had one person with me in many situations and that was either Kumanjayi Booky(?) or Noel Dixon who is Aboriginal Community Police Officer.

Would you trust your - - ?---Absolutely.

- - - black tracker?---I wouldn't call him a black tracker. I would call him an Aboriginal tracker.

Aboriginal tracker?---Absolutely. And I've - every ACPO I have worked with I have trusted.

Would you trust them with sensitive information that might cause difficulties to the police had it been used irresponsible or was there a limit to what you could tell your Aboriginal tracker?---I think it depends when you say what sensitive information are you talking about. If, for example - it's hard for me to say because in those communities I wasn't dealing with particularly sensitive matters of a nature where I would think the information could not be passed on so it would have to be extremely sensitive information for me not to share it. So if it was a covert investigation or something like that possibly not.

What about information concerning the death of a person?---In my view, I probably would have a conversation with them and find out what their kinship pressures placed on them that would require them to tell the family. Because that's the risk, isn't it, if the information gets out, what is then going to occur from that. I don't know if that was done or not.

Well, it wasn't. I don't think any police officer in Yuendumu even knew what the ACPO's kinship connection was to the deceased, but no one asked. So, would you regard those sorts of attitudes as attitudes that demonstrate that you deal with Aboriginal people as a group, rather than on a case by case individual basis?---In -- sorry, can you repeat the question in relation to - - -

Well, how do you think police should deal with Aboriginal people? Should they be dealt with on an individual assessment?---No, I think Aboriginal people should be dealt with the same as everybody else, accepting that there are cultural and elements that you need to consider when you're policing and working and living in Aboriginal communities that you may not necessarily have to deal with living in a community that is primarily made up of Caucasian, European, English-speaking persons.

Mr Proctor, have you seen the video tapes that were taken on a mobile telephone outside the Yuendumu Police Station?---No, I haven't, no.

Have you got any clear idea of exactly what was going on outside that police station in the crucial hours that we're talking about?---No, only from the evidence of statements that I read in preparation -- as part of this report.

Some of them are publicly available on the Coronial website. Have you not had a look at them?---No, I haven't. I genuinely haven't, no.

Okay. Did you choose not to or - - -?---No, I just didn't - - -

You're retired?---Look, to be completely honest, I haven't followed this religiously watching every single second of footage, to be honest.

Well, I've got about three more minutes to go. Is that okay, your Honour?

THE CORONER: Yes.

MR BOE: So, just in relation to the idea of paramilitary police being used in Aboriginal communities, your report highlights that, as far back as the Aboriginal Deaths in Custody Royal Commission that was recommended that wherever possible, that be avoided. The Inquest has heard evidence from a senior police officer that paramilitary-style immediate response team is the gold standard of policing that should be rolled out nationally, including in the Northern Territory. Do you agree with that?---No.

What not?---the IRT was -- well, first of all, when we talk about paramilitary or

tactical-type groups, the gold standard, for want of a better term, across Australia is police tactical groups. Mainly because they all operate to similar standards under the National Counter-Terrorism agreements. I was the commander of that area for quite some period of time. The IRT is a – were developed to provide a specific skills enhancement to Alice Springs for deployment to high-risk incidents where normal policing operations and tactics had failed and the situation – so, cordon and containment, where that have failed and negotiation had failed and the situation was such that an immediate entry and action was required. I think to say that it's the gold standard is very hard when it's a, for want of a better term, part-time unit that only has specific levels of training.

TRG are all a properly resourced, properly trained response group?---It's their fulltime job.

But in the Northern Territory, it's a bit hard to have one in Alice Springs?---Absolutely. And that was the reason for the development of the IRT policy.

Yes. So, there really isn't much call for a TRG in Alice Springs, is there?---I think the difficulty with having a TRG in Alice Springs, and it's a concept that has been mooted many times, even while I was the commander of that area, is deployment aside, if you could have that capability here, great, because TRG are experts at command and control. They're experts at de-escalating matters, even though their – one of their primary functions is counterterrorism and tactical assaults. The difficulty here is having all those resources, having that training, having the training of interrogability, because that's one of the key roles of TRG.

Would you agree that having part-time tactical police, for want of a better word, is likely to infuse general duties policing with tactical response group-style techniques?---Yes, I agree that the training provided to them with an enhanced level of skills compared to a general duties officer. However, the policies that were surrounding the IRT and their deployment should of prevented that infusion into general duties policing.

So should supervision?---Yes.

Right? And there was – there are real supervision problems in the Northern Territory Police, are there not?---I think, when you look at the evidence provided in my brief and the brief of evidence, there are supervision problems within Alice Springs and I can't speak for the whole of the Northern Territory Police, because I didn't look at the entire Northern Territory Police.

We're only concerned with Alice Springs here in this Inquest?---Yep.

But certainly, as at 9 November 2019, there were significant failures in the oversight of ordinary constables in the execution of their duty here, right?---Yes.

In town, right?---Yes.

And it spilled into Yuendumu on this night, didn't it?---Yes.

That's all. Thank you, your Honour.

MR COLERIDGE: I note the time, your Honour.

THE CORONER: We will take the morning tea adjournment.

ADJOURNED

RESUMED

DAVID PROCTOR:

THE CORONER: Take a seat.

MR O'BRYAN: Thank you, your Honour.

My name is Conor O'Bryan. I'm appearing on behalf of - - -

THE CORONER: Sorry, I got that – I said Mr - sorry. There's some derivation, there we go.

MR O'BRYAN: Close enough, your Honour.

Mr Proctor, I'm appearing on behalf of the Parumpara Committee, which is a committee of Elders from Yuendumu?---Yes.

I just wanted to pick up on something that Mr Boulten was discussing with you just before the morning adjournment, which is the militarisation of the Northern Territory Police and the paramilitary mindset within the Northern Territory Police, it I can put it that way. In your 34 years in the Northern Territory Police Force, have you observed an increase in the militarisation of the Northern Territory Police?---Yeah and I think I do talk to that in my report. Not necessarily in relation to our normal policing practices, I think militarisation of police, perhaps in Australia but certainly in the Northern Territory was increased after 9/11 where there was a significant national increase in terms of the counter terrorism threat. And I think I also put in my report that as part of that I think the Northern Territory Police is looking at the patrol rifle rollout.

Yes. Can I suggest to you, Mr Proctor, that one of several ways where you might see an increase militarisation of police force that you address in your report, some of the other ways may be the high numbers of ex-ADF members in the Northern Territory Police Force?---Yeah, I think I talk to that in report as well. I think we've got a chart in there that tells you how many ADF members we have.

You do. And I would suggest to you that it's over 26 percent?---Yes.

Of members recruited between 2010 and 2020?---Yes.

And you've already raised the military grade weapons that have been introduced into the Northern Territory Police Force. There's also military style uniforms, would you agree?---Yeah, I think in the 34 years we've had a transition from a khaki uniform to a blue uniform, the cargo pants. Whether that was based around militarisation or the practicality of now police officers carry more because of vests and more accoutrements, certainly from my experience wearing what I would call dress trousers and a khaki shirt to – and a belt and a pair of handcuffs, to police compared

to today's uniform of cargo pants, I think the cargo pants are much more preferable. But I acknowledge that they do have a paramilitary look to them.

And I was in particular having reference to the use of camouflage gear, for instance?---Camouflage gear within the Northern Territory Police though is limited to TRG and in this case the IRT.

IRT as well, yes. Militarisation may also be reflected in the training and tactics in particular I'm thinking with relation to the IRT in this case?---Yeah, I think there's no disputing that as I said before, the particular tactics where I would call skill enhancements that were provided to the IRT are based around training that is provided to the TPG in regards to rapid entry for high risk situations where normal policing practices and tactics have failed.

Yes. And what you say in your report – I don't need to take you to it – but you discuss the transition from a cordon and contain unit to a – to the IRT and you say, "The IRT adopted a paramilitary role focusing on weapons training and tactics involving green roles, meaning tactical observations in remote areas and black roles, meaning tactical entry into strongholds house clearing." Do you recall saying that?---Yes, because that was a transition from the original Cordon and Containment Team, which was very much Alice Springs based, as I say, to a skills enhancement where the enhancement was around, if required, if all normal policing practices in relation to a strong hold, for example, had failed, and there was an urgent need to access the strong hold, they had that particular training. Rather than, in the situation of the Northern Territory where distance is problematic, no – having general duties officers with no training, trying to undertake that type of entry.

Would you accept that the role of militarisation of the police force, in the circumstance and death of Kumanjaya Walker was always a focus of the Coronial investigation? While you were involved in the Coronial investigation (inaudible)?---Yes. It was one of the areas that the Coroner had asked us to look at in particular.

And I would like to take you to one of the annexures of Mr Pollock's statement at 7-111A, which I believe the clerk might have ready.

7-111A.

And if we could go to page 89 of that document please. You'll see there, Mr Proctor, this is minutes of a JMC meeting, "Operation Charwell – Coronial of 21 August 2020", you see that?---Yes.

And those present at the meeting include yourself, along with Superintendent Pollock and Assistant Commissioner Anticich, you see that?---Yes.

And if we could turn to page three of that report – of those minutes please court clerk. If you could scroll down a little bit further.

You'll see the sentence in the middle of the page there, "Trend analysis of use of force form part of collation of information regarding members with military experience." Do you see that?---Yes.

And that trend analysis was something that you undertook and included in your Coronial memorandum, correct?---Yes.

And it showed that ex-ADF members were more likely to use OS spray, Tasers and firearms, correct?---Yes.

Mr Pollock, are you aware of studies from the United States - - - ?---I'm Proctor, not Pollard, sorry.

My apologies, Mr Proctor. Are you aware of studies from the United States, former military personnel are significantly more likely than other police to have fired their weapons while on duty. Are over-represented among police who have had use of force complaints filed against them. And would appear to be over-represented in fatal police shootings?---I can't recall if I read those studies as part of my preparation. I know in this document I do reference some research I was able to undertake in relation to the militarisation of policing from the USA. But I can't recall if it was – if it contained those particular elements.

For your Honour's benefit, and for my learned friends, those studies are referred to at par 22 of Professor Kineam's(?) report, at 10-10AA of the brief.

If we return to those minutes, Mr Proctor, you'll see that the paragraph immediately below the trend analysis states, "Militarisation of policing, including recruitment training, is it combat or police training, whether there is anything in place re reprogramming or retraining behaviour." Do you recall that being discussed at this meeting?---Yes, and again, I think I addressed that in my report. As part of that, we contacted all the jurisdictions to see – so that – to see whether or not they had in their – the police training, anything that was specific to ex-military members in relation to the role of that they have in the military compared to the differing role they have in policing. The only advice we received back was that Tasmania have a small component of their recruit training, which focusses on the emphasis and the skills of community policing.

And focussing on the Northern Territory Police Force, is it the case that at the time you retired, there was no training that was focused on the reprogramming or retraining of ex-ADF members who are entering the Northern Territory Police Force?---Not that I'm aware of, no.

Mr Proctor, would you accept that with an increased militarisation of the Northern Territory Police Forces, comes an increased risk of police officers operating with a paramilitary mindset?---Yes I think that's a fair – yep.

And with a greater focus on force to resolve situations?---I don't necessarily – I couldn't – I can't say whether it would result in a greater use of force. I think when

you look at, certainly the research I did, there is, I think ex-ADF members are more comfortable in the use of force perhaps than police officers who haven't been training – haven't received that type of training. As to whether or not they actually – there are higher incidents of use of force, from ours it was very hard – I don't think we say that it was significantly higher or not.

In your Coronial memorandum, you discuss the Peelian principles of policing, do you recall that?---Yes, yes.

Those principles - - - ?---Please don't ask me to recite them now, because you know
- - -

No, well I can read this to you. They include matters like policing by consent?---Yes.

Respecting community principles. Obtaining the support and trust of the community. And using the minimum force necessary. You agree with that?---Yes.

And could I suggest to you that the risk of adopting a paramilitary mindset is that police are moving away from those Peelian principles of policing. Do you accept that?---Yeah, and I think in the current environment that we face, not such much in remote communities, but certainly from a broader policing environment across Australia, and certainly the world is, it's a balance between that. So does there need to be a paramilitary style of policing in communities like Yuendumu, or our remote communities, where that paramilitary is primarily focussed around terrorism, I would submit no, not the case.

I'd like to ask you in particular about the prevalence of a paramilitary mindset within the IRT in Alice Springs, in 2019. Could I ask you to turn to page 32 of your Coronial memorandum. What you'll see from this page, is a summary of IRT call-outs that Constable Rolfe was involved in?---Yes.

And if you look at the first entry for 2019, which is 27 February 2019. The summary there says "Two vehicles and firearm with ammunition were stolen from" numbers, "A property in Araluen. IRT members Bauwens, Rolfe, Hansen, Everett-Smith called to locate SMV and recover firearm. Vehicles were initially used which located one of the stolen vehicles. A pursuit was called, but it was later called off. A helicopter was used to try and locate the vehicles. Rolfe deployed with AR-15 in helicopter. Search later called off, after vehicles not being located." Mr Proctor is the deployment of a constable with an AR-15 in a helicopter, an ordinary policing operation for the Northern Territory?---No.

Obviously you had nothing to do with this incident, but you do have 34 years' experience in the Northern Territory. Would you be able to assist us in what the plan might have been, to deploy Constable Rolfe with a semi-automatic assault rifle in a helicopter?---No, I can't. I wasn't involved in that.

Would you agree that we've moved a long way away from the Peelian principles in this situation?---Yes.

If you go to the next incident immediately below that. The summary says, "Community unrest in Borroloola. Two IRT members called to supplement TRG members to maintain peace. Members Rolfe and Bauwens attended in camouflage uniform with full kit." Do you understand full kit to mean including AR-15's?---Yes.

Putting aside what we now know about Constable Rolfe and Sergeant Bauwens and their text messages, how do you think the community would feel with two police officers arriving for the purported purpose of maintaining the police, in camouflage gear with semi-automatic long arm rifles?---In relation to the firearms, it isn't clear – I am not trying to be funny - it isn't clear whether or not they were openly displayed or not, so it may be that the community may not have seen them. Certainly the presence of police in camouflage is quite a concern in the communities and I don't know what the rationale for the camouflage was or for what their duties were. Normally as in this case that we have before us a deployment for general support is normally undertaken in uniform - police uniform unless the specific plans or roles require camouflage. So if you obviously are going to be hiding in the bush or doing those things you're not in the uniform that has reflective materials on it.

Community could be forgiven couldn't they, for thinking that this was the arrival of a military unit rather than police to come and maintain peace?---Absolutely. And that is why in the past when other sections have deployed, unless there is a specific requirement to the task that requires them to have, as I say, the camouflage for operational purposes, it is normally in full police uniform.

Mr Proctor, would you agree that the creation of elite units such as the TRG or IRT risks damaging recruitment by encouraging and rewarding applicants with a military bent?---I suppose I am going to pause there and say I personally don't class the IRT as an elite unit, as I said before, to me it's a unit of general duties officers who have been provided with skills enhancement to do a specific task.

And provided with military grade weapons and uniforms to do those tasks?---It doesn't necessarily make them elite but I accept that in relation to the TRG - can you just repeat the question, sorry?

I asked did the - do you consider the creation of units such as - I used the word "elite" I understand you are quibbling with the word "elite" - creation of units such as the TRG or IRT risk damaging recruitment by encouraging and rewarding applicants with a militaristic bent?---That's hard for me to answer because I don't necessarily believe that the - if someone has military experience, that it is taken as a higher criteria for certainly in my experience of managing the TRG for several years, for the TRG, even though, again, it's a police tactical group, you have a large number of members there who have had remote policing experience because of the diverse duties that they are required to undertake which can include general support. So I don't always think that it's the military training that gives them a "hand up" for want of a better term, to get into those areas.

Are you aware that in the brief before her Honour is a text message from Bree Bonney that reads, "Police experience doesn't have fuck all relevance to TRG in comparison to army selections are retarded". Have you seen that text message before?---No, I haven't.

Given the nature of the TRG work, would you accept that it would be understandable, the opinion of police officers was that military experience was more relevant to becoming a member of the TRG than other things?---That's obviously the view of that officer - I gather that's a - that person is a police officer?

Yes?---I'm not sure in which context that is written. In my experience of managing the TRG the entry process is quite robust. The selection process at the end of the day goes down to a transfer panel which is not part of the TRG. Certainly in my time there yes, we had members who had military training, we also had a significant number of members who had worked in locations such as Wadeye, Ali Curung, Tennant Creek, because they bring an additional skill set and really, even with the military training we still require those people to undergo training in accordance with the ANZCTC close tactical group requirements.

I'd like to ask you about an opinion that has been expressed by Professor McCullough who has provided a statement that's on the Coronial brief?

MR BOE: I beg your pardon?

MR O'BRYAN: McCollough.

MR BOE: Sorry, thank you.

MR O'BRYAN: It's at 10-31A, for my learned friend. Professor McCollough says; "The separation between police and the military is morally grounded in the notion that it prevents police from adopting a mindset in which they believe they are fighting a war against the same people they are supposed to protect. The military, unlike the police, are no obliged to gain or maintain the support of the people they are acting against as they do not purport to act with consent. Paramilitary policing then is the antithesis of community policing which strives to work with and be inclusive of the community served." Do you agree with that thinking?---Yes.

My clients will be submitting to the Coroner ultimately, that the IRT deployment to arrest Kumanjaji Walker had the look and feel of an undisciplined paramilitary unit. Do you agree with that assessment?---I don't know if I would say it was an undisciplined military unit. I would say it was perhaps undisciplined officers carrying military type weapons.

With a paramilitary mindset?---I don't know what the mindset of the officers were.

Well, it's obvious from their actions that they weren't acting in accordance with the Peelian principles we've discussed, isn't it?---Yes.

We will ultimately be submitting that that was a consequence of the increased militarisation of the Northern Territory Police. Do you have an opinion about that? ---I disagree with that. I think it was a consequence perhaps, if you read my report, of the systemic failures relating to supervision management and compliance with policies and procedures of the IRT.

All right. I'd like to pick up that opinion that you have just expressed and come back to the idea of reprogramming or retraining behaviour that we were discussing a short time ago, do you recall that?---Yes.

In your Coronial memorandum you cite the word, "close" and you say that, "It's not easy for ex-ADF members to transition from warriors to guardians". I think Mr Boulten took you to that?---Yes.

In your report. I'm not sure if he did, but yes.

And what you go on to say in your Coronial memorandum, I don't need to take you to it but you say that, "Their training and experience embed a mindset that doesn't always align well with the requirements of community policing." The Coroner has heard evidence from Constable Sykes about his role in protecting Australian soldiers who are engaged in the mentoring and training of the Afghan National Army in Afghanistan. Did you have the opportunity to listen to or read that evidence of Constable Sykes?---No, I haven't.

You can take it from me that Constable Sykes was discussing the threat of a green on blue attack. You are familiar with that concept?---Yes.

And how it was necessary to be alert in that environment because the presentation of a threat required and extremely rapid response, given the nature of the work. You would also be aware, Mr Proctor, because you have probably seen it in the Coronial brief of the expert report of Professor McFarlane?---Yes.

And Professor McFarlane talks about how "hypervigilance can result in a greater propensity to attend to threat and a pattern of over-reactivity." Do you recall that opinion?---Yes.

McFarlane goes on to address Constable Rolfe in particular, and says that "Constable Rolfe's preoccupation and concern about a blue on green attack may have been an underlying driver of his reactivity and could have had the propensity to trigger his training responses learned in the military context rather than those learned in the policing context". Do you recall reading that?---Yes.

Do you consider that there would be benefit in specific training for ex ADF members to mitigate the risk of them adopting a paramilitary mindset?---Yes, and I think I make that in one of the considerations in my report.

And do you consider that it is necessary for the Northern Territory Police to proactively monitor ex ADF members to identify any concerning trends in their use of

force and if necessary, be in a position to intervene early?---I think, as I put in my report, I don't think it should just be limited to ex ADF members, I think there needs to be a greater monitoring of use of force so you can have early intervention. I think it applies across the board.

Do you accept, given the comments of Professor McFarlane there might be even a higher risk amongst ex ADF members?---Yes.

And that would highlight the particular important monitoring of its ADF members, would it not?---If you had that system in place, you could possibly put that flag on ADF members, but I think the starting point is to have a system that monitors all police officers who may use excessive force.

All right. Mr Proctor, there's just one other thing I would like to ask you about.

And if I could ask that we return to those minutes of the JMC meeting of 21 August 2020, and if we could go to page 1 of those minutes, which is page 89 of the document and scroll down – yes, thank you, that's good.

Do you see the paragraph there starting, "Agency continues"?---Yes.

It says, "Agency continues to write policies; however, we keep falling short. Noting that the Coroner may run out of patience with this, we need to be able to not only say we have written a policy, but what have we done since then? We need to be able to prove what we have done." Do you recall that being discussed at the meeting?---Possibly, but I'm not sure who that comment is attributed to, whether it's myself, Mr Anticich or one of the other people that are present.

Regardless of who expressed the view at the meeting, is it a view that you agree with?---Yeah, I think it's extremely important in any Coronial inquest that we, by the time we get to the Coronial inquest, we've at least indicated to the Coroner, as is the case with the Operational Response Committee, that we have commenced actions in relation to the issues identified. They may not be completed, but at least you've either considered it or you've done something.

And I take it that when you say, "commenced actions", that is separate and distinct from creating a new policy, for instance?---Well, an action could be creating a new policy to address whatever that particular theme or issue may be.

Would you agree that policies are only effective to the extent that they are actually implemented, enforced and complied with?---Yes.

A policy itself may reflect a general acceptance of a need to change, but without practical day to day compliance, they're effectively meaningless, aren't they?---Yes.

They're my questions. Thank you, your Honour.

THE CORONER: Thank you.

MR COLERIDGE: Your Honour, before the next counsel, not to hurry anyone up, just to get a sense of where we are and whether we might finish before lunch? I wondered whether I could get a sense of who's left to examine and how long.

MR O'BRYAN: I'll be about 10 minutes.

MR FRECKELTON: We have nothing at this stage, your Honour.

MS OZOLINS: I have some questions, possibly 15 minutes or so.

THE CORONER: Hopefully, we can finish before lunch then.

Yes, Mr Officer.

XXN BY MR OFFICER:

MR OFFICER: Mr Proctor, my name is Luke Officer, as you know, I appear for Constable Rolfe. Good to see you again?---Hi, Luke.

How's your golf? I'll ask you - - -?---No good today.

Mr Proctor, you've had a very lengthy and distinguished career as a police officer?---I've had a lengthy career, yes.

And part of that, would you agree, included you using your own force over the course of your career?---Yes.

And when I say "use of force", empty hand tactics or use of accoutrements?---Yes.

Did that also include a period of time where you would be the supervisor of other police officers who used force as well?---Yes.

And would that include when a case note entry or use of force form is submitted, you would review that. Have you done that in the past as well?---Look, I don't – I think that came in when I was either a superintendent or commander, so it wouldn't have been something I would have done as part of my role as a sergeant. Certainly, I think as a superintendent or commander, I might have reviewed some of the referred – as a commander, only those that were referred that were – required my review.

Yes?---But yes, I've have reviewed use of forces.

And you've also been Commander of Professional Standards Command in the past?---Yes, I have. That's correct.

You had several different secondments or - - -?---I think it was one, but for a period of months. It was after the – Mr McRoberts' issues.

Sure. At the top of page 29 of your report, have you got that there?

I just need the top of that (inaudible), but if you could just pull up 35 (inaudible) 7-4A. It's a different topic I'll come to.

But at the top of page 29, you commenced with a use of force history?---Yep.

And use of accoutrements by Constable Rolfe when you started the analysis of 46 use of force incidents. Just on that point, can I ask, is 46 use of force incidents for a police officer a period of some three years, do you regard that as concerningly high?---The data from my understanding, a use of force incident, or the recording of a use of force relates to the use of handcuffs, batons, OC spray or firearm, and then there's a breakdown in there.

Yes, I was going to say, there's 22 occasions of a use of force option?---Yes, yep.

I'm just simply focussing on use of force incidents and there being 46 identified, whether that is – causes you any alarm over a three year period for a police officer to be involved in that many?---I'd have to look at the other data we had in comparison to others, if I may, because it's very hard for me to say that 46 is high. It depends on the location in which the officer is working. For example, if the officer was a sworn officer working in the firearms unit and he had 46 use of forces, I would submit that would be pretty high.

Sure, so it depends on what they're doing?---Yes.

If I could put it this way, if that's 46 use of force for a general duties constable in Alice Springs, would that cause you any alarm as to that being overly high?---Not necessarily the use of forces, it's whether or not then they were determined on review what type of force was used and what are the circumstances of the force and of course, if any of them were excessive.

If I skip down into the bottom of page 29, an analysis of use of force data and involvement, it's NT Police-wide for the police 16 December 2016 to 9 November 2019 was also undertaken to identify the top 20 officer with use of force involvements, the top 20 officers are represented in the chart below. Rolfe is not recorded in the top 20 officers?---Yes.

And you will see that in the first column to the left, at least on my examination, there's a member there which has almost 100 use of force - - -?---Yes.

- - - recordings. And that, as I understand it on that chart, is related to the deployment of an accoutrement only. Is that right? Is that what the colours signify?--Yes.

Handcuffs, baton, OC, taser, firearms?---Yeah, no I can't quite – sorry, my printout – and it's probably not a very good draft, but I don't know which particular

accoutrement it is, but yes.

That's almost 100 use of force involvements with an accoutrement - - -?---Yes.

- - - in a three year period of a particular officer?---Yes.

And so, would you agree that there's a possibility, given that Constable Rolfe had 22 occasions of a use of force option in a total of 46 use of force incidents that that particular member could have had well over 100 use of force incidents over a three year period?---Quite possibly.

So, can that give you any assistance to indicate whether or not, as a general duties police officer, a constable where 46 use of force or 22 incidents of using an accoutrement is concerningly high?---I wouldn't say it's considerably high, and particularly now when you draw across the top 20 of the organisation - - -

Constable Rolfe didn't feature?---I wouldn't say that it was exceptionally high, no.

I'll just move to a different topic.

Madam Clerk, if you could just pull that up, I don't know where he's disappeared. It's the affidavit of - - -

THE CORONER: Have you got a hardcopy there?

MS OZOLINS: I do. I just magically found one in my bag and I don't think it's marked.

MR OFFICER: I'm just checking that they're unmarked, your Honour.

THE CORONER: I'll give it all – yep. I think there might now be out of order as well.

MR OFFICER: I will take you to it, Mr Proctor. If you could just start going toward the back of it. And it's a memorandum in AA-08, is the annexure reference. And it's a memorandum - - - ?---So it's an internal memorandum? Is that correct - - -

Yes, 20 October 2020, which is from - - - ?---Yes, yep.

- - - Scott Pollock to yourself?---Okay I've just got to find the bits. Excuse me for one second. Is that 008 or 009?

008?---I think I've got the right bits together, but I'm not in - - -

(Inaudible)?---I think I've got one with the pars 1, 2, 3 and 4 on it, but I'm not sure about the other pages.

Yes. (Inaudible)?---Yes.

Yes, that's right?---Okay.

I don't want you to – I'm going to take you through it in detail?---Mm mm.

But that memorandum from 20 October 2020 from Scott Pollock to yourself?---Yes.

In effect, raised concerns about Detective Senior Sergeant Barram's use of the DIAMO P model in his expert opinion, and that was provided for the prosecution of Constable Rolfe?---Yes.

You recall that? And in particular, at paras 5, 6 and 7, he referenced, in effect, that it was outdated, no longer relied upon, no longer part of the training package. That's Scott Pollock's opinion?---Yes.

Did you share, having read that memorandum, and I'll take you to the JMC that occurred after it in a minute, did you share that concern of Scott Pollock?---Yes, and that report was forwarded through to the Assistant Commissioner Crime.

Who was (inaudible) Mr Anticich?---Mr Anticich. And I think – I don't know if my handwritten comments appear on that one, but I think my comments were that the issue raised needs to be clarified, and should be forwarded to the crime team, to Mr Anticich, and for discussion with the DPP in relation to evidence at the trial.

Yes and indeed, it – you recall, I think Peter Kennon (sic) looked at - - - ?---Yes - - -

- - - Pollock's – Pollock's memorandum - - - ?---That's correct, yes.

- - - and provided his own?---Yes.

Which Peter Kennon's view was that there was no concern. Can you recall that?---I – look, yeah, I recall the memo coming back. And I think there was also some commentary around a conference that had taken place with the DP.

And can I ask you, from that same document you've got there, your affidavit, forward to – turn forward to NAA number 10, annexure number 10, which is the minutes from JMC number four, Operation Charwell?---Yep.

You attended – you attended that meeting, and that's what you wrote over at the top there?---Yes.

Do you have a recollection of that meeting with (inaudible)?---Yes.

You didn't seem very confident of that, why?---Well, when you read the minutes you'll see. It was a fairly robust JMC.

Yes. And I just want to put some of the following which were noted in the minutes. Did you - - -

A PERSON UNKNOWN: Could I just ask for the page of the PDF sorry.

MR OFFICER: It is page 93.

You didn't make the minutes yourself, was that someone else?---The meetings were recorded. And my understanding is that then practise, my thoughts were they were recorded and the recordings were kept, but the practice on the top floor was that they were then turned into minutes, and the – the minutes were then disseminated. So yes, I had read these minutes, and agreed that they were a reasonably accurate reflection of the JMC.

I just want to read you these four paragraphs from that, and then ask for your comment on, by reference to the issues raised by Scott Pollock about the DIAMO-P Model. This is on page 84, about the fourth paragraph. "NA" I assume that's Nick Anticich?---Mm mm.

"Reiterated that he is not saying the Coronial investigation is not to continue, but it is suspended. DP', I assume that's you, "Questioned whether this means all evidence will not be provided to the court, but rather information that fits the prosecution. Nick Anticich noted that investigators do not agree with SP's report and recommendations." Now when you raised that your concern, or your question, that evidence was not going to be provided to the court, but rather information that fits the prosecution, what did you mean? And what was the response you received?---I think this was around – I'll have to read the minutes to put that into – the meeting minutes to put them into context. I think it was potentially in response to the – the top paragraph where I think it says, "NA feels we have gone well beyond determining the cause of death for the (inaudible) and pre-empting a criminal trial puts us in precarious and difficult positions."

Yes. All right, and then the paragraph about the middle of the page, starting "DPP noted that NA he has concerns if the investigation is suspended, they would be exposed if there were items in the prosecution brief that were not correct or identified as being incorrect at trial, or subsequent Coronial. NA's direction to suspend the investigation convinced (inaudible) from being identified prior to the criminal proceedings going ahead. DPP noted he would not take responsibility for this." And then over the page, Mr Anticich noting concerns about the prosecution case being undermined, and then the perception, that he finds it offensive, on page 95, that the information should have been fact checked by the investigators before getting to the prosecution team. Can I ask you, those concerns that you had about correct information, did they directly relate to what Superintendent Pollock raised with respect to Senior Sergeant Barram's opinions, including the use of – or about the use of the DIAMO-P model or something completely different?---It was specifically in relation to that. But I think what I was trying to convey, was to suspend – at this stage, we weren't investigating per say, but we were still compiling the report, and reading through lots of information. My concern was that if he came across information, as in this case, which I believe was answered subsequently, satisfactorily, but if we came across this information and did not provide it to either

the – to the Assistant Commissioner for them to – for crime to then discuss with the DP, that that placed the organisation in a significant risk, and us in a significant risk. And given that we were acting and investigating on behalf of the Coroner, it also placed The Coroner's Office at significant risk. And as I say there, it was not a risk that I was willing to take.

Yes, so your concern was the accuracy of information that is being used to compile an expert opinion for a prosecution, have been factually correct, and did it seem to you, that Assistant Commissioner Anticich was not bothered by it, or troubled by it?--
-No, I don't think that was at all, because he actually – in the first memo when that's raised, he referred that on to the crime team and the DP. And my understanding, when you read the whole of that is, that that was discussed with the DP, and then addressed through a subsequent statement. So I don't think he was concerned with it. I think he was more concerned that, I think there's a term somewhere about testing evidence or – or whatever. I think his concerns were, was there a potential that us looking at things, might create a problem in relation to the criminal proceedings. I couldn't give you a specific example of where it – where we – outside of this, where we had found something of this nature, and – but my concern was more around the decision to suspend. Which was cancelled after three days. But I – for me, it was very much about we were investigating on behalf of the Coroner. And in accordance with the *Coroners Act*, and – and I didn't believe we were undermining the investigation, or doing any of those things. We were just doing due diligence.

But your point is, that if someone raised a concerned about factual accuracy and the truth of something, that be properly examined to make sure that what is presented is factually correct and true?---Yes.

Your Honour, I'm not sure if those audio recordings have been called for, from the meetings, or are available - - - ?---I don't believe they're available. When we – if I may, when we prepared the subpoena for the Supreme Court, I don't believe the one for this particular matter I don't believe was in existence.

What happened to them?---As I said, I think the practice was that once the minutes had been prepared and signed off in accordance with everyone being in agreement then the recordings are no longer maintained.

They are deleted?---Yes.

Is that for every JMC meeting?---I don't know.

Do you think that's wise to delete the audio recordings?---It's a practice that is recognised and accepted by the Company Director's Course, being no longer a policeman but a policeman of 34 years, I like to keep minutes but I can - as I say, that wasn't my decision. It's just a practice that is on the (inaudible) for the organisation.

And apart from the minutes and the audio recordings, did anyone in these JMC's keep handwritten notes?---I don't believe so because we were of the view that the audio recording was even better than our handwritten notes.

Even though it's subsequently deleted?---Well, as I say, at that stage I didn't know it was going to be deleted.

THE CORONER: Yes.

Any other questions? Sorry, Ms Ozolins.

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

MR COLERIDGE: And also Mr Casseldon is on the phone. We are just checking whether he has any questions.

XXN BY MS OZOLINS:

MS OZOLINS: Mr Proctor, as you know, my name is Sally Ozolins. I am appearing in these proceedings for the Northern Territory Police Association. Just at the commencement am I right in thinking - and please correct me if I am wrong - that immediately prior to going over to take over the Coronial matter you were the Commander in charge of PSC?---No, no.

No?---So, Sally, my secondment to PSC I think was about three or four months and it was a secondment that occurred after the suspension of Commissioner McRoberts and I can't remember what year that was now and I was seconded across to do some investigations in relation to the circumstances around that and then also for PSC while the other officer involved was on suspension.

Right. So we've heard a lot of evidence through the course of this inquest about supervision and leadership and you have, I think, rejected this morning the comments made by Mr Anticich earlier this week that any failure by managers to properly identify red flags, if you like, in behaviour with corruption, have I understood your evidence this morning correctly?---Yes, I suppose in my view I don't think it is corruption unless you could show that they deliberately and purposely ignored those things. I think one of the things that concerns me is the systems that are absent for - and there's two elements to this. There are - it's evident here that we have systems in place where supervisors have not done due diligence on certain aspects but I think, as I put in my report, I think there's also an absence of systems and also guidance or training for some supervisors.

Sure. I think you actually said in your report that the training experience and willingness of supervisors and manages to address poor performance of behaviours which can lead to inconsistency in how procedures are undertaken was one of the issues that you identified and I think from what you've said just now there are a number of things that can factor into those failings. Would you agree that a high turnover in staff could be a contributing factor to consistency and supervision?

---Yes, and I think I do make that point in the report when we looked at the number of supervisors of Constable Rolfe in Alice Springs and then from my experience, at times a number of acting supervisors and quite often - it's easy for me to sit her and say, "Oh yes, people should know or people should be trained" but quite often due to illness or emerging circumstances the requirement for a member to be put into an acting position doesn't always necessitate that they have that level of experience or training.

Yes, and Alice Springs, like most other regional areas, has a significantly high proportion of probationary and junior constables, does it not?---Look I would have to speak historically because I don't know what its establishment is at present. Yes, it does, but I think at the same time, for me it's more around the circumstances. I think when you're looking at familiar in the use of force place, I was very conscious that at the moment the current policy only talks about four words - for want of a better term - that you have to satisfy and it doesn't look at the broader aspects around use of force in terms of the events before, leading up to the actual use of force at the critical point.

And is that what you were talking about earlier when Ms Morreau was asking you questions which involved the implementation of IAPro I believe it's called?---IAPro is one. That's about more the management of the workforce. When I looked at some of the use of force reviews it's clear that there are inconsistent findings on use of force reviews undertaken by supervisors. That goes to the point where I think that system has failed.

Can I just query, I understood that this IAPro has capacity to track and monitor and identify red flags but it's actually only utilised as a case management system, is that right?---It does have - I'm not sure if it does now. Certainly in a previous version it's all around licensing. It has a capacity - it's only as good as the information you (inaudible) in it but you can put information in it that allows you then to look at whatever parameters you want to put into it.

So as I understand it it's never utilised that way by the Northern Territory Police Force?---Look, I think historically it might have been for a short period of time but I am not sure.

We have heard some evidence in the inquest that particularly Sergeants in regional areas have had an increasing number of administrative duties over a period of time which has resulted in a reduced capacity to spend time on the road with their patrol groups. Is that something that you've observed?---Look, I would have to be honest, I really can't answer that Sally. I - I haven't been a sergeant for a long time. I think there is - we've seen an increase in the workforce, I am not sure whether the number of supervisors have increased. I guess you would class the requirement to assess use of force as an administrative task because obviously that isn't something that is done in the field.

So the evidence that we have received indicates that sergeants and Senior Sergeants spent a lot more time desk-bound rather than out on the road. Is that

something that you can comment on?---From a Senior Sergeant, depending on the role they are undertaking, so if you are an officer-in-charge of a station I wouldn't expect that you would be spending a lot of time out on the road, if you're a watch commander I think that's a different story and I don't know for Alice Springs, I can only really speak for Darwin. I think there are times when they are required to be behind the desk but that's what (inaudible), it would be really hard for to answer 12 months out.

I think we were talking earlier about training and mentoring being a key factor in ensuring that things like use of force if there are red flags but they are picked up but training and mentoring for the sergeants and senior sergeants who are expected to undertake these reviews, you would agree, wouldn't you, that the training and mentoring for those sergeants and senior sergeants is very important?---I think training and mentoring and I also think ensuring that you have a system by which, if you are going to - let's stick to use of force reviews, you have a system that allows those sergeants and senior sergeants to undertake that review in a consistent manner.

Sure, and I think that was something that was referred to by Mr Anticich in his 2019 report or review, rather, into the disciplinary processes but that the training, officers had to be equipped to do the work that they were being required to undertake?---Yes, I think there's equip but I think for me this is, as I say, as part of this report, the system also then will identify whether or not officers - those undertaking those assessment are providing due diligence to the assessment process.

Yes?---Which then should feed down to the officers using force, if there areas where
- - -

Yes. And similarly, if the sergeants and senior sergeants are not trained properly, to do that proper due diligence in a consistent way, that's going to have an impact on how – the flow down, effectually, because obviously they're supervising, but every sergeant has a supervisor?---Yes.

Every senior sergeant has a supervisor, and every superintendent has a supervisor, and right up to the Commissioner of Police himself?---Yes, that's correct.

We have heard both Assistant Commissioner Wurst and Superintendent Nobbs describe the position of a sergeant as being critical in policing, and in fact, I think, Assistant Commissioner Wurst said it was, in his view, the most important position in the police force. So I just wanted to ask you about your understanding of the training for sergeants generally, and there is actually a general order in relation to qualification and development pathways, isn't there, and was in place, certainly, when you were in the Northern Territory Police Force?---I think there were that many changes to the promotional framework prior to my leaving that, in all honesty, I couldn't give you a firm opinion on that pathway and development.

Yes. Do you have any recollection prior to leaving the police force – I understand it hasn't changed, but I will certainly be corrected if I'm wrong – that in order to progress to a sergeant position, senior constables had to meet a number of requirements, but one of them was completion of the Northern Territory Police Force College Sergeant Qualification Course. Are you familiar with that course?---That particular iteration, I'm not sure. In previous roles, I have delivered training at the college to sergeants and senior sergeants in relation to command and control, and I think we had a program developed by Superintendent Gill and myself which was the strategic incident command course for senior sergeants.

Right. But not particularly qualification courses?---No, no.

And, in fact, my understanding is that that particular course, which is, according to the general order, a precondition for appointment as sergeant, that particular course hasn't been run for many years?---I'm not sure. I think my last recollection was it was an assessment centre process, so I can't probably help you there. My apologies.

Would you agree that that sort of training in addition to other courses, which at least – sorry, I've just lost my glasses and I can't read – it's too small - - -

THE CORONER: What was the name of that general order that you were referring to, Ms Ozolins?

MS OZOLINS: Your Honour, it's the general order rank qualification and development pathway. And I apologise for not foreshadowing relying on it earlier. It was something that was brought to my attention just recently.

THE CORONER: Is it in our brief?

MS OZOLINS: I don't believe so, your Honour. There's a flow chart attached to the end of that general order, appendix A, and it provides a flow chart for promotion through the various ranks, and it specifically states that mandatory for promotion is from senior constable to sergeant, is the completion of the sergeant qualification course that I've just referred to, and it's also desirable for people seeking promotion to undertake leadership – a leadership and management course, and also a strategic incident command and control course?---Yep.

Are you familiar with those?---I'm not familiar with the first two. I am familiar with the third, which is the strategic incident command course.

And are you aware of whether that course has been run in the last five years?---It was certainly being run prior to my retirement – any – I ran that course while I was the commander of TRG and the like, and I am aware that the course was still being run by members of the TRG, senior members of the TRG, because it is about command and control and the like, but I couldn't tell you when it was last run.

Sure. And, similarly, for promotion to senior sergeant, there are mandatory requirements of obviously continuing education, but also this advanced leadership and management course. Are you aware of whether that has been run?---No, I couldn't – I couldn't help you. I don't know.

I just want to move on to the – we've been talking about the review of Pt IV of the *Police Administration Act*. I see you're smirking. Your name has been on a number of the working group documents and discussion papers that have been published?---Yes.

And I just wanted to gather your views in relation to the Pt IV processes. We did hear some evidence from Mr Anticich the other day, and we've also received a copy of the review that he undertook, and just in summary, he seemed to acknowledge in his report that there was a very punitive approach for a period, and that with the suspension of the operation of s 14C by the former Commissioner, that is, Commissioner Kershaw, that there was a significant increase in serious breaches of discipline being dealt with under Pt IV. Do you agree with that?---I don't know the figures to say that there was a significant increase. What I do know is that with 14C being removed, the options available to prescribe members where minor matters had occurred, was taken away. So then obviously the Pt IV provisions had to be applied.

Yes, and I think Mr Anticich also commented in his report that there were a number of matters that were being dealt with by way of Pt IV disciplinary proceedings which an assessment had indicated were more managerial or HR-type matters?---With the removal of 14C, Pt IV kicks in, of course, and when you – apologies, I don't have a clear recollection of every single provision under the options available to members, but, of course, one of those is to take no further action. From my understanding or my experience, Pt IV was still used to provide the opportunity of a member to provide a response to whatever that issue was, and then consideration of what action needed to be taken by the prescribed member. So I guess for want of a better term, it was using Pt IV, perhaps, as a management technique for lesser matters, but unfortunately, because of no 14C they fell into the serious discipline part.

Yes. So obviously if it – Pt IV has been – which is obviously titled "serious breaches of discipline", but it was being used as a management tool – I think Mr Anticich gave evidence that there was then, from his perception anyway, an increased desire by members, if you like, to fight proceedings, if you like, or to not simply acknowledge what was being alleged and moving on. Do you agree with that observation?---It's hard for me to agree with that, because I wasn't in professional standards or – or had the information that Mr Anticich had to – to make his opinion. The only observation I may make is that under Pt IV, as you're aware, there are a number of – I call them options, but available to members, and one of them is dismissal. So when you serve a notice on a member, the options that – you have to include them all, includes dismissal, and that could be an inhibiting factor in members acknowledging the breach of discipline, and not contesting it.

Yes, because it might be the case that it's a minor breach of discipline, but they're being advised that they're at risk of dismissal, effectually?---Yes.

I just wanted to go now, broadly about the welfare of members, and I note specifically that in your – sorry, if I could just have one moment – in your report, you were talking about the guidance that was provided by the Northern Territory Police General Order Death in Custody and investigation of serious or fatal incidents. You said, “Resulting from police contact with the public in relation to the separation of witnesses has been provided to ensure that as soon as possible after an incident has occurred systems are put in place and directions are given to minimise the conferring between witnesses and the contamination of evidence, whether consciously or unconsciously”. And that’s at page 97 of your report. I think you were talking specifically there about the potential contamination of police evidence. Are you just looking for the report?---Yeah.

Sorry?---My apologies.

Page 97 I was reading from?---I think I've misplaced it somewhere.

It should be big enough that it won't be lost?---Thank you. My apologies. What page was it?

Page 97?---Thank you. Could you just refer me to the paragraph again please?

Sorry, it's just the part where you're talking about – and I'm paraphrasing – systems being put in place and directions given to minimise the conferring between witnesses and the contamination of evidence whether consciously or unconsciously?---Yep.

And I gather there you were talking specifically about the potential contamination of police evidence?---Yes.

And you go on to say at page 98, “Any indication of evidence of conferring has the potential to undermine the integrity of an investigation”. You obviously agree with that because that was what you wrote?---Yes.

You also separately have raised concerns about police members being reluctant to provide statements. And I think one of the examples you gave was Dr Beer querying if she was providing a statement in a voluntary way or in a coerced way. So you identified a number of issues with the gathering of evidence in this particular investigation. And I just ask you to comment on – or to indicate, would you agree that those same concerns arise in relation to civilian statements and ensuring that evidence is taken as soon as possible in order to avoid potential contamination of evidence?---Yes, but I think as I highlight in my report, where police are concerned there's an expectation on police forces where police are involved in these types of incidents that the integrity in the investigation is of the highest order. So unfortunately by being a member of the police force you are held to a higher standard.

Yes, yes. But there were some concerns raised about the difficulty in police members obtaining statements in the community in the initial stages of the

investigation, wasn't there?---Look, I'm not sure. I wasn't present when the initial investigation was undertaken. I think that was perhaps in Mr Pollock's evidence.

I think it was – well it's referred specifically to – I'm going to get his rank wrong – I think it's Superintendent Pennuto or senior sergeant at the time?---Okay.

Has referred to various challenges in his notes. But what you specifically comment on is concern that specifically Aboriginal witnesses were not offered a support person when they were being interviewed and none were offered counselling in the context of statements being taken. And that's about page 100 in your report?---Yep, okay.

You acknowledge that it was established that the witnesses that you were referring to had a reasonable interpretation of English, but you reiterated the need for a support person or counsellor. So do you agree that where people have experienced a traumatic or critical incident it's important to ensure those people are supported through the process of reliving the events?---Absolutely. But I think it's also important when you're taking statements or interviewing anyone who is subject to trauma or particularly in my experience in dealing with indigenous Aboriginal people where they're intimidated by the police presence. And also to remove potential criticisms, in my experience and you know, statements, we've got Anunga guidelines and a whole raft of policies, procedures and case law to support people who English is a second language or who are from Aboriginal communities. So I think it is important. But again, it has to be a decision – I think you'll have a policy in place and then it's really down to the decision of in this case perhaps, the senior investigating officer as to whether or not the urgency of that statement is required.

Sure. So just on that, I mean the - you'd accept that police members who are involved in critical and traumatic events would also suffer, not obviously those things particular to being Aboriginal or having English as a second language, but you would accept that police members involved in traumatic incidents are going to feel and experience that ongoing trauma by reliving events in giving statements and things of that nature?---Yeah, absolutely. But I think the other side to that is that there is a requirement to at least obtain some form of account as close to the incident as possible. That may not be a three-hour statement, it might be a point of five or six questions asked in a non-confrontational manner to get an account of what has occurred.

Sure. And in fact the general order that we were talking about before specifies that it's essential that the duty of care and welfare obligations to members involved in an incident and their families be appropriately address. You'd obviously be aware of that. You note in your report that all welfare obligations regarding police members were met except for the Northern Territory Police Force Chaplain visiting the scene. That's at page 101 of your report?---Yes.

Let me just outline what the welfare obligations that you referred to. What were you contemplating when you said that all of the welfare obligations were met?---I think that was in relation to the notifications to ESS.

Do you know who undertook the notifications to ESS?---I'm not sure if that was done by the operations team in Darwin but we did find that notifications to employees for support services had been undertaken. So I think - - -

Sorry?---Yep.

Was there anything else or just the - - -?---I think from my recollection when we looked at it, the general order had been complied with. And I don't have the general order or the policy in front of me. But I think it was ESS notifications. I'm not sure whether or police force or Police Association notified welfare officers and I'm not sure if any – I haven't got – I can't recall the general order specifically now. I'm onto sure if that's a requirement that the Police Association welfare officers are notified.

So you're referring to the Northern Territory Police Association's welfare officers?---Yes.

One other thing just arising out of that that's in your report at page 102, you specifically state, "The obligations under the general order are specific in relation to the provision of immediate welfare assistance and NTPF is not responsible for long-term arrangements of welfare support". Just wondering if you could explain that?---I think that is in relation to – I actually don't have the general order in front of me so I'm not quite sure what I was thinking about there, whether it was in relation to welfare offered to the family in terms of family counselling.

And are you saying that that sort of welfare support is not the responsibility of the NTPF?---Yeah, I don't think that the general order covers that.

What are your views on that? Do you think the Northern Territory Police Force does, or should have responsibility for the welfare of members following traumatic and critical incidents?---I think it does already. But I think it dependent on what type of welfare we're talking about. Unfortunately, it might be that if the members are suffering severe trauma, then obviously there are processes in place that – that go beyond that in terms of the work health.

You commented in your report that the General Order, as it relates to welfare, may not be contemporary, or fit for purpose?---Yeah.

I'm just wondering what you meant by that?---I think it was out of date.

The General Order - - - ?---It probably – well I think it was due for refresh. I shouldn't say out of date. It hadn't been refreshed, from my recollection. And probably required some review and updating.

Are you aware of whether or not that has occurred?---I'm not, no.

Just on that provision of support. You noted specifically in your report, and I – if you'd like to have a look, it's at page 168. You – the paragraphs starts "During the

investigation, the Coronial team identified several instances, where the actions of police officers, police unions, and social media commentary, individually, and cumulatively, indicated perception of bias, in favour of Rolfe.” And you go on to give a list of things. But you’ve stated that the role of police unions and the Northern Territory Police Association, in briefing all police witnesses, including Rolfe. Now can you just under – explain, what briefing you were referring to there?---Can you take me to the particular - - -

THE CORONER: The last dot point in that list.

MS OZOLINS: Yes, the last dot point?---I have to say that that was the – I think earlier I advised that there were points that Mr Anticich provided to the Deputy Coroner for inclusion. That was one of those points. I think that might relate to – look, it would be difficult for me to say what he was thinking about. But it might be around the – Ray Murphy’s involvement. But I’m not sure what the specifics of it are. Ray Murphy was the lawyer I think for the Police Association, I’m not sure.

I’ll check that. But as far as you’re aware, there was no briefing of potential witnesses, was there?---I’m not sure what Mr Anticich was alluding to there.

No, as far as you’re aware?---I don’t know. I didn’t look into that.

I think that might be all my questions, thank you.

MS MORREAU: Your Honour, Ms Ozolins mentioned in her questions a reference to the meeting notes of the police working group on the *Police Administration Act*. I haven’t seen the brief reference, if there – if it is in the brief here. Otherwise, I call for those meeting notes, given the relevance to the issues in relation to the complaints - - -

THE CORONER: Which meeting notes in particular are you calling for?

MS MORREAU: The – well there’s a police working group, about the Police Administration Act. And only – they were referred to in very broad terms. But the working notes, I assume deal with the considerations that have been brought to bear and – within the police service about any amendments to the Act required to address some of these issues in relation to effective complaints resolution.

THE CORONER: Do you have a particular year or - - -

MS MORREAU: I don’t. I only heard that they were mentioned by Ms Ozolins in – in questions.

MS OZOLINS: Your Honour, it wasn’t actually meeting notes. And I apologise if I gave that impression. It’s a discussion paper. I don’t think it was published in a public way if you like. It was a discussion paper to assist in the review of Pt IV *Police Administration Act*. And I believe it was published, at least to the working group, in July 2021.

THE CORONER: July 2021?

MS OZOLINS: Yes, your Honour.

MS MORREAU: Well I call for the discussion paper.

THE CORONER: All right.

Does anyone want to respond to that call? I don't think it's for this witness. He's no longer with the police.

MR FRECKELTON: We'll have a look for it, your Honour. The issues are superseded to some degree by the external (inaudible).

MR COLERIDGE: Your Honour, I think Mr Casselden indicated that he didn't have questions. He's on the line, and so I'll just wait for a moment. And if there's no objection, then - - -

MR CASSELDEN SC: Your Honour, Mr Casselden speaking, I have no questions of this witness on behalf of Mr Pollock, thank you, your Honour.

MR COLERIDGE: Your Honour, I have about 90 seconds.

THE CORONER: Sure.

REXN BY MR COLERIDGE:

MR COLERIDGE: Mr Proctor, you were asked some questions about (inaudible) regime under the *Police Administration Act*. Do you recall that?---Yes.

And in particular, you were asked some questions about Pt IV?---Yes.

Which is a type of discipline?---Yes.

And it's interaction with s 14 - - - ?---C - - -

14C?---Yes.

Now Commissioner Kershaw, as he then was, directed that all disciplinary matters, no matter how serious, were to be dealt with under Pt IV, correct?---No, he directed that 14C would no longer be used. So there is a slight nuance in - - -

Sorry?---Yes.

(Inaudible) outcome that - - - ?---Discipline matters would then be - - -

Dealt with under Pt IV?---Under Pt IV. Under the processes of Pt IV, yes.

That's the question I wanted to ask you. Part IV prescribes processes. It doesn't say what the outcome will be in every case does it?---It provides a – so there's a process to Pt IV, which I think you've – or if you haven't, you will be given evidence on. And then, as a result of Pt IV, a prescribed member, depending on rank, has a number of, I'll call them penalties, but options that can be provided, that range from no further action, to verbal caution, to written caution, to dismissal. And there's a demotion penalty.

I suppose the point I wanted to make is that the fact that 14C wasn't being used anymore, doesn't indicate that across the board penalties were going to go up for disciplinary breaches. It just means that a more rigorous process was going to be followed, correct?---Potentially, but I think the process of Pt IV is quite rigorous.

Yes?---Whereas, with the 14C, it is very much a low level of matters that don't fall into the discipline space for officers, sergeants, senior sergeants to have the capacity to manage the workforce using that provision of the Act. So, it has some implication for it, it's not – it doesn't sit in disciplinary. So, there's an outcome for the member and it has implications for the member. If you were subject to 14C, it meant that you might not be able to apply for a promotion, or you might not be able to apply for transfer, but it wasn't the high-end penalty that Pt IV brings.

Can I just put an analogy to you and you can tell me if you think it's a fair one. In this court, the Local Court of the Northern Territory, people are charged with minor offences from time to time and ultimately, a judge says, look I'm going to find that proven, but it's not particularly serious. I understand the circumstances and I'm going to discharge you without any further penalty?---Yep.

That, in a sense, is the type of outcome that Pt IV contemplates in certain minor cases. Correct?---Yes, but the process to get to that is far more complex than the 14C process.

Absolutely. And it's complex and rigorous in the same way that in the court - - -?---Yep.

- - - you would enter a plea?---Plea, yes.

And you make a plea in mitigation and then there would be a formal determination by a judicial officer - - -?---Yes.

- - - that the conduct was not serious enough to warrant a penalty?---Yes, that's correct.

Can you see the public interest in ensuring that, even though they might be minor, a rigorous process is undertaken before an allegation of breach of discipline is dismissed as being minor?---Yes.

The other thing I wanted to ask you about was the notion that the availability

discipline is dismissal as an option might mean that everyone is contesting – you're aware, for example, that offences like the offence of criminal damage carry maximum penalties of 14 years' imprisonment?---Yes.

Graffiti is an example of criminal damage?---Yes.

If I was to scrawl my name on Mr Boulten's books, I would potentially be committing the offence of criminal damage. Correct?---Yes.

If I got advice that I was going to be sent to prison for 14 years, I would sack my lawyer, wouldn't I?---Yes.

So, you have to approach these things with a degree of reasonableness in the assessment of the serious misconduct?---Yes.

Correct?---Yes.

Okay, that's it, your Honour.

THE CORONER: Nothing further?

Thank you for making yourself available. I hope you don't have to go to court too many more times, Mr Proctor?---I'm hoping so too, your Honour. Thank you very much.

And thank you for your very – you, together with Mr Pollock's, very thorough investigation and report which has provided significant guidance in relation to the issues that we've been addressing in this Inquest. And we certainly would not have made the progress that we've made or that I think we've made without that dedicated piece of work that both of you produced?---Thank you very much.

WITNESS WITHDREW

THE CORONER: We'll adjourn until 9:30 on Monday.

ADJOURNED