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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 26 SEPTEMBER 2022

(Continued from 23/09/2022)

Transcribed by:  
EPIQ

MR BOE: Your Honour, before Dr Dwyer starts - - -

THE CORONER: Yes.

MR BOE: - - - may I announce that I have appearing with me today Ms O'Neill and Mr Boe for the Walker and Lane families.

THE CORONER: Sorry?

MR BOE: Ms O'Neill of counsel is also appearing today.

THE CORONER: Thank you.

MR BOE: And she will be taking some of the witnesses this week.

THE CORONER: Thank you very much.

MS MORREAU: I should also announce my appearance for the Brown family. Morreau appearing for the Brown family this week. Mr Mullins was appearing last week.

THE CORONER: Thanks, Ms Morreau. Yes, Dr Dwyer.

DR DWYER: Thank you, your Honour. I call Assistance Commissioner Travis Wurst.

TRAVIS JAMES WURST, affirmed:

XN BY DR DWYER:

DR DWYER: Sir, could you please tell the court your full name, your rank and where you are currently stationed?---Assistance Commissioner Travis James Wurst. I am currently the Assistant Commissioner responsible for the service area of Greater Darwin Road Safety and Support. I'm based out of Darwin.

You've provided a number of documents and attachments - interviews and attachments and statements that assist her Honour. I'll just name them onto the record. There is an interview that you participated in on 5 December 2019, which is found, your Honour, in the brief of evidence at 7-144 with various attachments, and a statement on 20 August 2020 at 7-145 with various attachments. Assistant Commissioner, at the time that you participated in your interview on 5 December 2019, just a month after Kumanjayi had passed, your substantive rank was that of commander. Is that right?---Correct.

What was your substantive position at that time?---So, at that time, I was the commander responsible for Darwin command.

Why was it that you came to be involved effectively in some decision-making on the

night of the 9th – well, I withdraw that; on the day and night of 9 November 2019?---So, in October 2019, the commissioner, Commissioner Kershaw, had moved to another role, and as a consequence, Deputy Commissioner Murphy was acting as the Commissioner of Police and Assistant Commissioner Narelle Beer, who was responsible for Remote and Regional Policing or Remote and Road Safety, as it was called then, was acting as the Deputy Commissioner and I fulfilled her role for a number of months in Alice Springs.

I will come to your decision-making and assistance you gave on 9 November shortly. Before I do, can I ask you firstly about your history in the Northern Territory Police. I appreciate that you have set this out previously in your statements, but particularly for those watching, it is important to understand your background. You started as a police officer, I think in Alice Springs, on 12 December 1995. Is that right?---Correct.

Where did you do your training in the lead up to starting as a police officer?---So, I started my training on 3 July 1995 and that was conducted at the police college which is based in Darwin at the Peter McAulay Centre.

Do you recall as part of your training having any advice or instruction about cultural competency?---There was some during my training. I do recall as a part of that going to Batchelor and undertaking some cross-cultural-type awareness, but it was not as extensive as it is now for police recruits.

Did you grow up in the Northern Territory?---No, I did not. I came off a farming property in country South Australia and then moved here when I was 19.

So, your career has always been in policing. Is that right?---My – potentially, my career has been policing and policing in the Northern Territory, yes.

What was it that attracted you to the role?---Well, I had always wanted to be a police officer. We travelled as a family up here when I was 15. To use the romantic term, “I fell in love with the place” was true. I applied for the police when I was 19, was accepted and joined as I said before - I was sworn in the day before I turned 20, as a 19-year-old.

So, forgive me for being blunt, Assistant Commissioner, can you tell us now your age?---I’m 47.

So, are you able to then provide us with some reflections of your time in Territory Police from when you were a young man, 19 or 20 until you’re working your way up effectively from Probationary Constable to Assistant Commissioner?---Yes.

I just wanted to ask you about your experience in bush communities. You told us that you started in Alice Springs in 1995 and your first relief duties, you explain in your interview and statement, were at Yuendumu between 28 May and 31 July 1996?---Correct, yes.

You were relieving then at Papunya Police Station from February 1997 until June

1997?---Correct, yes.

And you had a permanent position at Yuendumu from 1 March 1998, and you worked at that station until May 1999?---Correct.

That was your first experience of policing in community. Is that right?---Yes.

Sorry, I'll just ask you for your reflections about Yuendumu in 1998 when you were stationed – well 1997/98 when you were stationed there permanently, do you recall how many police officers were there at the time?---So, in 1998 – sorry, 1997 when I was at Papunya, that was a sergeant and two constables. And at Yuendumu in 1998, that was a sergeant, two constables and we had an Aboriginal community police officer at times as well.

I think the Aboriginal community police officer that you worked with, two Aboriginal community police officers at that time. Is that right?---Yes. One was there permanently and another work – moved between Yuendumu and Kintore at the time. Both of those men have since passed away.

So, I won't ask you to say their names if that's culturally inappropriate, or at the risk of being culturally inappropriate, but can you tell us about your relationship with the ACPOs as a young officer when they were there?---They were instrumental in providing me with an understanding, a cultural understanding, of the community that they were a part of. Both of them were senior Warlpiri men in their own right, as well as holding the leadership position within the Northern Territory Police. They were able to integrate me into that community so that I had an understanding of what was and was not appropriate and the way in which I should and should not communicate with people and how it should occur. I also was given the opportunity to understand where I should and should not go in that community from a cultural appropriateness point of view. And those two men both became – and their families, I became close with, to the extent that I became their friend and I actually went to both their funerals. One man was buried at Kintore and the other was buried at Nyirripi and I actually took my family to the funeral at Nyirripi.

When you were learning from those men about, you said part of it included what was and was not appropriate, can you give us some examples of that?---Body language, eye contact, skin group relationships, the marriage protocols, sensitivities around ceremonies, the relationship between men and women within the community. Look, although they explained lots of information to me, it was extremely complex and I must say I, to this day, still don't understand much or all of it. But it gave me enough information to know that when I had a question, I knew where to go to answer – or get an answer to that particular question.

In that respect, one of the places that you would go to would be your ACPOs, obviously, to get an answer to questions. Did you also come to know Elders in the community who you could ask for advice from?---Look, very much so. I became familiar with both men and women who held senior Warlpiri leadership positions within the community. And that wasn't just the elder individuals in the community,

some of the young people as well, who were then, when I was there, emerging leaders, one of whom is now an Aboriginal community police officer himself and is a Warlpiri leader, that's Derek Williams. I knew not just within the Warlpiri – sorry, the Yuendumu community, but also in other communities, Nyirripi, Willowra, Laramba. Lajamanu, who the leaders within those communities were and how to negotiate my way through some of the sensitivities that may occur in our daily business.

In terms of dealing with conflict that might arise in the community, did you ever go to Elders or emerging leaders to assist you in that regard?---Regularly. Regularly. The same applied for when I was at Papunya as well.

When you were in the community in 1998 do you recall that the Mount Theo program was operating?---It was. I am not entirely sure of its actual name but I will refer to it as the Mount Theo program. It was a program that was designed around supporting young people who were affected by - or engaging in petrochemical abuse - petrol sniffing, to use the vernacular.

Just coming back a step. We know that the population of Yuendumu currently fluctuates but is somewhere between 800 to 900 people. Do you recall what the population was when you were there?---It ebbed and flowed from probably 500 to 1000.

You've just mentioned petrochemicals, during the period of time you were at Yuendumu in '98/'98, was petrol sniffing a problem for the community - for some community members?---So when I was at Papunya it was a significant issue and that was '97. There was, in '98/'99, there was substance abuse there that related to petrol sniffing within the community, particularly within a cohort of young men. There was the occasional young woman and occasionally an adult male but it was an issue that confounded that community whilst I was there, yes.

What about alcohol?---The traffic of alcohol from legitimate locations where it could be purchased was a significant problem. We would spend a lot of our time in efforts to interdict - to prevent alcohol from reaching the community and, unfortunately, when we were unable to do so which happened regularly, we would then have to deal with the aftermath of alcohol within that community and that would manifest itself in many and varied different ways.

It might sound like an obvious question, but from a policing perspective what were the issues when you had an influx of alcohol in the community?---It could lead to violence, particularly domestic violence. It was an enabler for conflict at times between community groups, people would drive motor vehicles under the influence of alcohol, which created additional risk. It caused dysfunction in relation to getting people to work or getting young people to school and it happened in the community relatively regularly, in my time whilst there.

Was night patrol in operation at any time you were there?---Yes, there was a night patrol and the men - and I believe a couple of women who were involved in that have

all since passed. It was a functioning entity but - but not regular in its support to the community.

When it was operating and supportive of the community was it of assistance to police?---Look, it was. They would share information with us. We would likewise do the same and that would allow us to work together to try and manage whatever the particular scenario was at that point in time.

It stands to reason, doesn't it, if you've got elders and emerging leaders who are assisting police to stop the substance abuse, that is an effective way of helping the community?---Yes, absolutely.

Can I just ask you about Mount Theo again? Do you recall the work of Andrew Stajinowski?---Yes.

Sometimes known - or otherwise known as "Yakajiri" or "Feathers"?---Correct, yes.

He was there when you were working there as a police officer?---He was.

Can you tell her Honour about the relationship between police and Yakajiri?---So Andrew was - I don't exactly know what his role was but - other than to recall that he was involved in the Mount Theo program and we had a relationship with Andrew that I would describe as positive. He was a passionate individual that was there for the betterment of the community. We used to use his services to bail young men predominantly, from memory, to him to take to Mount Theo to give them the opportunity to be rehabilitated away from the petrol sniffing abuse that they were - the cycle they were stuck in at that point in time.

And did you ever go and visit Mount Theo?---I did. Constable Hand and I drove to Mount Theo on at least one occasion, possibly two, and I do recall on one occasion going and spending time with all the young youth - young men - who were there who were on bail, to have the opportunity to speak to them about why they were there in a point in time when there was clarity because they weren't affected by petrol at that point in time.

Do you recall that as a positive interaction?---Absolutely, yes, it certainly was. It was certainly positive in relation to not just the engagement involving Andrew and the young people but also in relation to the two Elders who were responsible for that particular outstation. For context, Mount Theo is north of Chilla Well, it's about 150 K's north-west up the Tanami from Yuendumu and about 100 kilometres into the desert area. It's a - traditional country was managed by the two Elders that were there, one of whom since passed away and the other, I believe, is still alive and lives in Yuendumu now.

And you're referring to Peggy Brown(?) are you?---I am, yes.

You describe there, going out there with Senior Constable Chris Hand, as he is now? ---Mm mm.

You worked with Officer Hand when you were at Yuendumu?---Yes, yes, Chris Hand and I both went through training together and then we worked together in Alice Springs and then at Yuendumu.

So what was your relationship like with Officer Hand when you were there?---It was fantastic. So Chris and I, we had a sergeant who was promoted to Yuendumu and he was - he was more administrative based within the police station and Chris and I did all the community work - all the community engagement and we worked extremely well together.

Do you recall times in the community where you were understaffed or under-resourced because of various incidents?---Well, at times we might've only had a staff member - I'd say two staff members as opposed to three. At times I did operate by myself or with the Aboriginal community police officer who was there because either the Sergeant or Chris may not have been available. When one of us would go on leave someone would relieve from Alice Springs generally, so to suggest it was understaffed, it was the operating environment within - in which we did our job.

During that period of time - I am sticking still with 1997/'98, were there any periods of significant conflict in the community that were difficult?---So, in 1998, soon after I started, there was a period of conflict that lasted about six weeks that started about - within the first week of my arrival. And that conflict involved numerous family groups. I am not entirely sure how it started, but it did. It had a long-term legacy within the Warlpiri community but it was sparked by a football match that occurred and that culminated in lots of different instances of violence that occurred over a number of weeks at various times throughout the community. On multiple occasions people were injured and during those conflicts that happened in various locations across the community, some of which we were involved in and were called to, and others that occurred without our knowledge until post the event.

And in terms of the ones that you were called to, how were they managed by police? ---Very, very difficult because of the number of people who were involved, the number of police that were there, it was either - it was two or three of us, possibly four. We did not expect the Aboriginal community police officer to be involved in that type of scenario because of the cultural responsibilities that person also held but I do recall trying to take weapons off people, trying to quell angry crowds, trying to manage, at times, hundreds of people who were all armed with various weapons. It was almost impossible for three people, without placing ourselves at a danger. Our priority was more around children within those groups who got caught up in the conflicts and tried to manage them out of those scenarios. When I talked about weapons it wasn't just simply traditional weapons, at times the community would use other weapons - hammers, axes, knives, machetes, pieces of steel.

There are a number of firearms used for hunting purposes, is that right? By community members?---Yes.

Is it fair to say, however, that it's not usual that a police officer would be confronted by a gun being wielded by a community member?---In community it's only happened to me on the one occasion and that occurred at Papunya where I was - someone brandished a firearm at me whilst under the influence of petrol. It didn't happen to me whilst I was at Yuendumu but I am aware it has happened at Yuendumu on other occasions.

Can I just stay with that time in Papunya then? So that was at some stage in 1997, is that right?---Correct.

Can you tell her Honour what happened in that incident?---Myself and my partner then, whose now retired, Acting Sergeant Glenys Green(?) were called to a disturbance that was near a particular community leaders house. And as we were approaching that house, I saw something that looked unusual in the darkness. And when I shone a light, I could see that this young person had a firearm pointed at Glenys and I. I turned the light off and told Glenys to run. Glenys ran right – sorry, left, but I ran right, and ran around behind him and tackled him. The individual was actually a – a young man who was – had no sensory ability to hear or see – so sorry to hear. He could see. He was deaf.

And so you understood his actions to be a product of his petrol sniffing?---Look I'm – I'm not entirely sure. But he was certainly under the influence of petrol at that point in time.

It stands to reason, doesn't it, that when you're under the effect of that substance, you might act in a way that's irrational?---That's certainly my experience. So people, when they were not under the influence, would act completely differently if they were under the influence of petrol. Some of the behaviours of some of the young men who were – who were kind and gentle people, when not under the influence, they were very different when they were under the influence of petrol, unfortunately.

At any time when you working in community did you ever draw your firearm?---No, but I had been with Chris, who did on one occasion. But I respectfully told him to put the firearm away very quickly. And we dealt with the scenario without the need for the use of a firearm.

Have you – did you ever draw your Taser or you – were Tasers in existence at that time?---They – they weren't a thing back then.

Okay. And capsicum spray, was that a thing?---No.

So at that stage when you're policing in community, you don't have many non-lethal weapons, apart from your using your voice commands?---Correct.

And tactical retreat, and a baton, I suppose?---That's correct. That were – they were the extent of our tactical options, yes.



At that time, when you were in a community, you're still a young man in your early twenties. Did you feel that that time in community was important to you in developing your communication skills?---Absolutely. I learned how to communicate appropriately, at a level that was designed for maximum effect. I had to disarm a situation at Paradual(?), an entity, an individual. I learnt how to listen. I also learned – and when I did my first stint at Yuendumu in 1996, the sergeant at the time, I think actually may have been Acting Sergeant Michael Schumaker(?), he led me down a path where we were involved in a number of scenarios that were potentially volatile, but he showed the way in which communication was much more valuable than – than being hands on, so to speak, using – using our other tools. And we were able to talk many angry individuals down, and take them into custody safely, as a consequence of using that skill set.

Mm mm?---And it's certainly a skill set that – that you need to develop by being – being present, and listening and taking time. Because the language that you use will have an impact on the way in which a scenario plays out. And you only learn that by – you cannot learn that through a cross-cultural environment – in a college environment. You learn that operationally through being involved in the community when you are doing a job as a police officer.

But leadership in that regard is crucial, isn't it? You just gave an example of it from Michael Schumaker?---Yeah, absolutely, yeah.

So if you were advising young officers, you're the sergeant at Yuendumu today, and you're advising young officers about how to use your voice commands, what do you – what advice do you give?---Speak slowly. Understand – so whether it was intentional or not, I learned – and I say this to everyone who goes to a remote community, take the time to learn some of the local language. Whether it's just simply hello or please or thank you. Those small elements of understanding the local language, to show a level of integration and appreciation of the environment within which you are working, is extremely important. I did that – I've done that in every community that I've ever worked at. So much so that over time at Yuendumu a lot of my language would shift, and I would speak more Warlpiri than I would – I understood that I would or did, and it was certainly relevant when I came to town and people would ask, what did I just say. And that was the way in which that I – I took the opportunities that – when I was at Papunya, when I was at Yuendumu, and every other community I've ever worked in, I've done exactly the same thing. So that you are a part of the community, not – not the police officers, in that community, if that makes sense. Because you are part of that community.

Apart from assisting you in your work, was it also rewarding for you to learn about – to learn how to – or some language skills?---It probably was not something I appreciated until I went to Papunya and Yuendumu that the depth and complexity and the richness of what Indigenous culture is – was, is, and will continue to be. And I – yeah, it didn't dawn upon me until I had the opportunity with an elderly man, who was the traditional owner for Yuendumu, who sat me down under a tree and talked me through his life story, and – when I first got to Yuendumu. And then helped me understand some of the cultural nuances that were important to me. And then they

were obviously reinforced by the other two Aboriginal community police officers. But that in itself, gave me an insight into – this is not just another part of society. This is not just another town that's – that's up – down the road from Alice Springs. This is unique, and it's deep in cultural history, that as I say, to this day, I know a little bit, but I certainly don't know as much as – as many others. It's – and it was extremely rewarding for me to be able to be part of that. To be able to learn that information. And then be able to pass that onto others. Because I've done that with other police that – that have gone to Yuendumu, in the lead up to their arrival. A young man has just moved to Kintore, as a police officer, from being an Aboriginal community police officer. And I took the opportunity to sit down and speak with him only last week about the – the things I learned when I worked at Papunya and Kintore back in the nineties. That those things won't have changed, because the culture won't have changed, and the legacy won't have changed.

Did you come to know as a young man working in Yuendumu in the nineties about the Coniston Massacre?---I did.

How did you learn about that?---I'm not entirely sure how I learned about it. But I actually went to the site. So where I first learned about it, but I actually went to the site with the – one of the Aboriginal community police officers who had died. He took me there. He did not say anything, but he took me to the site. We also visited some other outstations, at the time, around that area. And I haven't been back since, but I've learned more about it since that time.

And do you appreciate that the – the on-going trauma for a community, as a result of that state sanction massacre?---Look yes, and I didn't appreciate it at the time, because it wasn't something that I – that I had been familiar with. But after the facts, I did some research. I had to use the police library, because the internet wasn't really a thing back then, to provide me some information to learn about it, and I was – I was quite outstated to be honest. But to – to understand why that particular person who took me there didn't say anything, I – it took me a while to appreciate why, because it was obviously a sad sight for Warlpiri people, to this day.

Do you appreciate that that history in Australia, can impact on the way that subsequent generations trust police?---Yeah, absolutely. And I know in other communities across the Territory where we've had critical incidents such as this, that it takes a long time to rebuild that trust. And that same scenario, it will take time, many years, a number of years, to be able to do that to the full extent. And to – in fact it may never be completely resolved, as it is not, with the Coniston scenario.

You gave an interesting example in relation to use of force when you were a young officer, working with Officer Hand. And I don't do this is any way to be critical of Officer Hand. But can you tell us what happened in that incident?---We were trying to arrest someone, and then that person pulled a knife on the – tried to stab me, to avoid apprehension. But we – we talked our way through it, and used the community that were there to – to disarm the man, and take him to the police station.

Were you - - - ?---So no, we didn't use – didn't have to use our hands at all.

When you were more senior – I withdraw that. When you working with Officer Hand, were you more senior, or were you the same rank?---We were the same. We were off the same course. Same vintage, so to speak.

Okay. You effectively said that Officer Hand pulled his – his firearm. I'm not suggesting anything inappropriate, because I – you're saying that's in response to a knife, is that right?---When I say pulled his firearm, he went to pull his firearm - - -

I see?---De-clip. I don't – he didn't brandish it as such.

Okay, So, he went to unclip it?---Yeah, from memory, yeah.

And at that time, can you recall whether there was distance between yourself and the person who had the weapon?---No, he was right in front of me.

So, what did you do?---Stepped back and then started to engage. That's an example of using language. We were arresting him for murder and for an incident that occurred in Alice Springs the day prior and I had placed an audio – back in those days, it was a tape recorder on the roof of the car that he was in to record the apprehension. And unbeknownst to me, he had a knife in his hand beside the door and he thrust that at my head in an attempt to avoid apprehension. Obviously, I moved and then we verbalised and engaged and used the community to de-escalate the situation and take him into custody. I actually walked him to the police station from that location.

And has there been any occasion in your career outside - - -

THE CORONER: Can I just ask you, did you put handcuffs on him?---No.

DR DWYER: Were the community of assistance then in bringing that person in – in assisting him to arrest him?---They walked with us to the police station and they were present when we put him into the cells. So, sorry, yes, in short.

At any time when you were working there as a young police officer in '97/'98, did you use the ACPO to assist with arrests?---Yes, on multiple occasions.

And do you have a recollection of whether other people in the community, Elders, emerging leaders were used to assist with arrest if the ACPO was unavailable?---Yes, certainly.

Moving on from your time in community, I think you've said in your interview, you were the officer in charge of the southern division at some point in February 2010 to 2011. Is that right?---Yes.

During that time, I'll just read you what you say about it in your interview, "During that time, we had significant riotous behaviour on the back of a homicide that occurred at Warlpiri Camp in Alice Springs where a young person by the name of Kumanjayi

Watson was killed by Warlpiri people from Yuendumu and that created significant cultural conflict that lasted in the vicinity of 12 months. Across that period and disbursed or interspersed with various levels of violence and unrest within the community.” So, although none of that violence was necessarily directed towards police, that was an issue and I will come back to anything directed to police. But during that time, her Honour understands from material in the brief of evidence that there was – it was very difficult for people in Yuendumu community itself. A number of people in the community in fact moved to South Australia for a period of time?---They did.

And there were particular issues then that police had to try and manage because of family upset?---Yes.

Did you actually go into Yuendumu yourself or were you managing from Alice Springs?---No, no, I went back to Yuendumu. So, I spent time with the individuals who were displaced when they were in Alice Springs in transit to and from Adelaide and I also spent time in Yuendumu during some of the conflict trying to assist with managing some of that conflict and doing – I actually took with me during that period the Aboriginal community police officer who I spoke of earlier who lived at Kintore. I had him come in because he’s actually a Warlpiri man. He was a Warlpiri leader, although he lived in Kintore because he married a Pintubi woman. And I took another gentleman with me, now whether he was an Aboriginal community police officer at the time or not from Santa Teresa, Phillip Alice, who still I believe in the Northern Territory Police employed as an Aboriginal liaison officer. I took both of those men with me to assist with some of the cultural brokering around the mediation and the reintegration of the displaced group of people who were returning back into the community. So, I did spend a lot of time at Yuendumu during that period.

When you use the term “riotous behaviour” in your interview, what do you mean by that?---Significant conflict that was hallmarked by the use of various weapons to inflict injuries upon parties on either side.

Did you – were you ever there when the TRG was called in?---Yes, I was there at one stage when TRG were in the community, yes.

Were you responsible for requesting the TRG at any stage during that time?---Look, I’m not entirely sure, but I would have been a party to some of the decision-making, yes.

At any time back then, so we’re 2010, was there a cordon and containment group in Alice Springs?---Not to my knowledge, no.

So, if you wanted police with particular training in relation to dealing with riotous or challenging and aggressive behaviour, it was the TRG that you were calling in; a specialist squad?---Look yes. The scenario would have been such that they would have been there in a general support capacity.

Okay. So, is it the case then that you don’t recall the TRG being called in to break

up any riotous behaviour, they were called as backup effectively, for general duties?---Look yes, I recall them being there at a general support capacity, which is part of their function.

Do you recall being involved in – I'll withdraw that. When the TRG were asked to assist general duties' police in Yuendumu in 2010, was there an operational order or plan that would be developed prior to them coming? And if you don't – I appreciate it was some time ago. If you don't recall, just tell us?---I don't recall the exact detail, but I do recall there being a plan that governed their involvement within that community.

You referred to ACPOs being of assistance in mediation efforts, in effect. Correct?---Correct, yeah.

Was there any other agency or assistance brought in, other than police or ACPOs to help or police are ACPOs – ACPOs are police, but any external agency?---So, what is now the Department of the Chief Minister and Cabinet were involved in developing a broader mediation program for the Warlpiri, which started to evolve and develop then and I believe it still exists to some extent to this day. And that was about – starting that mediation and then maintaining that mediation long-term to maintain peace within that community.

Do you recall now some of the Elders who were of assistance in mediating disputes?---Look, yes, yes, certainly. I'm on sort of both sides of the family groups.

You mentioned earlier, I think Robin Granites was a particular help to police in the leadership around that?---Sorry, Robin and another gentleman who has passed away were part of the group that was displaced. And then on the other side, you had the family of the deceased and their leadership group and then you had other members who weren't directly involved as such, but were cultural leaders and had a voice in that space as well, some of whom have given evidence to this court already.

Do you include in that, Mr Hargraves?---Ned Hargraves is one.

And was Warren Williams involved in assisting police at that time?---No, I don't believe so. I believe that at that time, Warren was living at Ti Tree.

Okay. Do you agree that it would have been particularly traumatic for children exposed to that fighting at the time?---Yeah absolutely.

Are you aware of whether any trauma counselling services were brought in to assist the community?---In 2010?

Yes?---Look, not to my knowledge. It doesn't mean it didn't happen though.

All right. And it might be the same answer to this question, but since that time, to assist families, particularly children, who were subject to trauma during that fighting, has there been any counselling or support services?---No, not to my knowledge, but

that doesn't mean that it hasn't occurred.

In relation to your experience in Alice Springs, you had that period of time between 2010 to 2011 as the officer in charge of Southern Division, what other experience have you had in a management capacity at Alice Springs?---So, after we came back to Alice Springs in 2020, so I was at Nhulunbuy prior to that. I was in – it's now called the Central Desert Division, I was there until May of the following year, to 2021 and then I went back to the officer in charge of criminal investigations. I was in that role for 18 months, I believe. I then was six months as the staff officer to the assistant commissioner of regional and remote policing as it was at the time. And then I was promoted to the rank of superintendent and I was the Alice Springs division superintendent for two years up until mid-2015. I was then the OIC of – sorry, the Superintendent in charge of the Remote Region again, before we transferred back to Darwin.

I should say, Assistant Commissioner, in your statement, which is dated 20 August 2020, you set out in detail your history in the Northern Territory Police Force, and the different posts that you've held. So I won't take you through that entirely. But when you left in 2011, you maintained your contact with community members from Yuendumu, tell her Honour, and you in fact attended the two – the funerals of the two ACPO's that you'd worked with?---Yes. So we – we moved – my family and I moved back to Darwin in 2016. And I attended Kintore for the funeral of – of one of those men. And then I think it was a year later, I actually went back to Yuendumu on a number of occasions to see one of the other men when he was ill and ailing, to see him and his family. And then when he passed, I took my family, gracious enough, the Commissioner at the time, allowed me to take my family to Nyirripi and where I was again a pall bearer in relation to that funeral, and burial of that particular individual.

What did that mean to you?---It – well it was – there was multiple layers to that. So it showed the ongoing respect that the community had for myself as a person, and I was a police officer. And there were lots of other police there, it wasn't just myself. And it shows the – the power of relationships in that – in those remote community contexts. It showed – gave my children an opportunity to see that community, and see the way in which those relationships were held by that community in relation to me. And how they then embraced – the community embraced my children. My children actually participated in the funeral. That was – that was really quite an empowering experience for them as well. And those relationships are ongoing to this day. So I still get phone calls, I still have text messages with the various family members from – from those family groups. And communication. Not just myself, there's lots of others too. But we maintain that – it's a friendship, it's not – it's not a police relationship, or a professional relationship.

You have worked as a Divisional Superintendent, between July 2013 to 2015. And I'll come back to that shortly. And I want to ask you though about a difficult topic. During your experience in Alice Springs, as a young police officers firstly, then out at community, and then back in managerial roles in Alice Springs. Did – you're often interacting with Aboriginal community in difficult circumstances, where there are

arrests, with some members of the community, obviously. For yourself though, you've told us about some very positive interactions and friendships that you developed. Starting with your time as a young officer, did you ever hear negative, racist expressions about Aboriginal people, used by police officers?---Look yes. I'd be – it would be dishonest to say otherwise. There was certainly the odd language that now, upon reflection, was highly inappropriate. But it wasn't widespread. It was – but it did occur, when I first arrived in Alice Springs. Certainly when I went to remote communities. So as a – as a police officer in Alice Springs, you're dealing reactionary to alcohol fuelled incidents within the community on a – on a daily basis, ongoing. It wasn't until I went to a remote community that I was able to deal with Indigenous people in their community, in a time when they weren't at their lowest ebb, that I had the opportunity to get that broader cultural appreciation of – of what it meant to be a Warlpiri person, or a Luritja or a Pintubi person. I didn't experience that – that language when I was in those remote communities. And I didn't really experience that language much after I left, or if at all, after I left Yuendumu and moved to Darwin. But there certainly was pockets of it occasionally when I was a young constable.

I want to ask you particularly about your time as a Divisional Superintendent, between July 2013 and 2015. You understand, don't you, that MFIC, we – we have a document which reveals some text exchanges between Constable Rolfe and other officers, including a sergeant, who was working at – within the Southern Division. And they reveal the use of terms like – referring to Aboriginal people, "Bush coons, niggers, meandables and grubby fucks." This is 2019, that language is being used. Did you hear that language when you were the Superintendent, working in Alice Springs in 2013 to 2015, directed to Aboriginal people by police?---Look no I didn't. But if I had have been aware of it, we would have done something to address that – that language.

What would you have done, if you'd heard a police officer, in your station, refer to Aboriginal people using the term "niggers" or "bush coons"?---Well that's not who we are as an agency. It's not who we were as an agency then. It goes to the heart of who we are as the Northern Territory Police. That language undermines the culture of being a police officer in this agency. And what it means to – to wear this uniform. If that language was made apparent to myself and my team, we would have dealt with it – I mean obviously there's a disciplinary pathway, but it's more than that. It's about the culture and the impact that was having on those individuals, and why they were using that language, and get to the heart of – of where that language comes from and why it's even being utilised in that – whatever context it was being used in. And that would have been the most appropriate way of going about managing that, because it could be about the individual, it could be about their own personal biases, or it could be a reaction to something they've been exposed to, that required – they may have required support in relation to some welfare concerns, potentially. It could have been a whole raft of reasons. So – but if we had of known about it, it's not something that we would have ignored, and it would have needed to have been addressed. As it would need to be addressed now, it that became apparent to us.

What do you say to someone in the community, or in the police force, who says look it's just people letting off steam, it doesn't mean anything?---No I don't accept that at all. I didn't accept it previously. I don't accept it now. It's – it's indicative of – of someone's personal biases toward a cultural group that has the ability to impact on their ability to do their job. A job that we must do without fear or favour, and objectively. And you cannot have that language seeping in to the work place, or in a private context. It doesn't matter, because it has the ability to influence your ability to do your job.

Do you think that the use of racist language can lead to de-humanising people, who you might have to interact with?---Of course.

And that could lead to decisions being made about use of force that are inappropriate?---Potentially.

If an officer in – used that language and – was there – you say you would have to get to the bottom of why that language was being used. What do you say about that the fact that that language appears to have been used by a sergeant, who was himself in a leadership role?---Well that's extremely disappointing, because the rank of sergeant is, in my view, the most important rank in the police force. Because it is the position that is the representative of the Commissioner 24/7, in all front-line operational policing text across the Northern Territory. And that person is responsible for shaping and developing the minds of all our young police officers. They are supervisors. They are leaders. They are mentors. And to hear that coming from a sergeant's extremely disappointing.

Do you agree, Assistant Commissioner, that to understand that that language – well I withdraw that. That if it's revealed that that language comes from a sergeant, there should be some form of discipline that is applied, fairly swiftly, once it's revealed?---The – the matter needs to be dealt with appropriately. Now whether that's discipline, or some other form of appropriate sanction, it would be relevant to the context at the time.

It certainly needs to be addressed quickly, do you agree?---Addressed, yes.

I want to ask you now about the development or the cordon and containment group and what subsequently became, as we understand it, the IRT. In your statement from August 2020, you say at par 12, "I was exposed to the deployment". I withdraw that. I'll go back a step. In par 11, when you worked as the Divisional Superintendent between 2013 to 2015, you say you commenced the development in Alice Springs, based – of a rudimentary capacity to provide enhanced cordon and containment capability. Was there any cordon and containment at all when you started there in 2013 in that role?---Look, no, and I probably should place some clarity around that paragraph. It may be that it existed at times prior to that so I didn't develop it as such. I was aware after there was an exercise - a training exercise - delivered in Alice Springs that if we were to, for example, be confronted by a counter-terrorism type scenario in Alice Springs, we had front line officers investigators and then we would have to wait for specialist resources from Darwin to



be deployed and it was that gap in between that sort of led to the concept of reinvigorating Cordon and Containment as a concept, and that was to provided exactly as the term suggests, cordon off an area, contain a potential offender until specialist resources were available to assist, more broadly, in relation to that particular matters, so that's what we went about developing.

Was it ever intended that the Cordon and Containment Team would be responsible for a high-risk arrest?---Well, look - no, not in - not in my understanding at that time.

You are aware that the team ultimately came to be known as the "Incident Response Team" or IRT and you say at par 12 you were exposed to their deployment when you were the acting Assistant Commissioner of Crime at Darwin - in Darwin, is that right? ---Yes.

Can you tell her Honour about that?---So I became aware through a joint management committee meeting in relation to a response to a suspicious death at Ali Curung. I believe it was Operation Charwell(?) it was called and through that committee meeting there was some talk about general support being provided into the community by the IRT as it were, the Incident Response Team, that as the first time I'd heard that language. I believe that was 2017, but my statement would confirm that.

There is just one matter that - before that time, in your interview you say at page 30 in 2015 "Before IRT, when I was in Alice Springs with a small group of people that we had, I do recall sending them to apprehend someone near Rabbit Flat" and you recall Officer Lee Bauwens and Officer Luke Bevan(?) being involved and they assisted Yuendumu police in apprehending someone. Was that something that you were involved in deployment of the IRT - I withdraw that - of Cordon and Contain or - - -?---I don't know whether I was directly involved in their deployment but I am certainly aware that they were tasked specifically to assist Yuendumu with that particular apprehension.

Do you recall the development of any general orders in relation to the Cordon and Containment Team?---I know it was being developed as I transitioned out of the Alice Springs superintendent role and I understand it has since been a standing operation procedure since being developed, after I'd left the role.

Were you involved at all in the standard operating procedures for the IRT?---No.

Had you seen them at any time prior to 9 November?---No, I hadn't.

Can I come now then, Officer, to the incident on 6 November. On 6 November 2019 can you just remind us what your substantive position was?---So, I was the Acting Assistant - my substantive position was Commander of Darwin but I was the Acting Assistant Commissioner for Regional and Road Policing as it was at the time.

You came to be aware of an incident in Yuendumu where two police officers were involved in attempting to arrest Kumanjayi, is that right, and there was an axe

incident as it has come to be known?---I received an email on - I believe that was a Wednesday. On the Thursday or Friday I received an email. I actually don't recall which day, and that email came to me from Commander Brad Currie, who was the Southern Command Commander that provided some context around the welfare concerns as a result of that particular matter and a brief indication around the ongoing attempts to take the person involved into custody. When I received that email I sent an email to Senior Constable Chris Hand as a welfare check on him, given that he was involved in that particular incident.

I will just read to you the email that you sent. It's attached as an annexure to your statement of 20 August 2020. You write to him, at 11.52 am, after finding out about that incident;

"Are you all right? I see the Warlpiris with the surname of Walker are still ours and my nemesis, Travis".

Firstly, why did you send that email? It's Thursday 7 November?---It was a welfare check, as I said, to Senior Constable Hand. I must assist the court by explaining the word "nemesis" it's an extremely poor choice of words, however, when Senior Constable Hand and I were at Yuendumu there were a group of men with the surname Warlpiri - surname Walker, sorry - who were all Warlpiri men. There were five and they were such that we had lots and lots of interactions with them, some of which were violent and many of which required them being apprehended for various things at various times and that happened consistently throughout our entire time at Yuendumu and they were - they were a challenging group of people to deal with because of the violence that they were capable of.

When you wrote that - the word "nemesis" you've just said it was a poor choice of words. Did you mean any offence by it?---No, no, it was just to suggest that that surname was a surname that was synonymous with some of the time that we'd spent at Yuendumu around our interactions.

Chris Hand writes back to you,

"Hey mate, yeah, I'm good thanks. Getting too old for this stuff, ha ha. The same family names keep popping up. Just the younger ones now, the people we dealt with are too old to fight us. I don't think he wanted to chop us up, he just wanted to escape. No-one was injured and that's the best result in my view. I trust is all well with you. Chris."

Did you question that in any way when he said to you, "I don't think he wanted to chop us up, he just wanted to escape", did that sound - did that make sense to you? ---Look, it does, because that was the way in which Chris and I conducted ourselves at Yuendumu, so that made sense. I don't - from memory I don't think I even replied to his email.

He then says, "No-one was injured and that's the best result in my view". Did you agree with that?---Of course, no one got harmed.

Did you watch the body-worn video at any stage at that time?---Not at that time. I didn't see the body-worn video until after the incident on 9 November.

Do you recall having and further discussion with Officer Hand at any time between 7 November and the death of Kumanjayi on the 9th?---I did have contact with Senior Constable Hand prior to the passing of Kumanjayi Walker on that particular night.

It was after he had been shot, is that right?---Correct.

But do I take it from that exchange that you were satisfied, you did a welfare check on Officer Hand, you were satisfied from his response that he didn't - that his welfare was under control?---Yes.

And you didn't think that there was any further follow-up required?---Well nothing that earlier in that email it talks about the fact that the Southern Command Management Team were providing welfare support to those people at Yuendumu in any case.

Your next involvement I think in this - in what occurred subsequently, was a phone conversation that took place between yourself and Superintendent Nobbs at 1:51 pm on 9 November, correct?---Correct.

Why was it that he was calling you at that time?---So, in the position that I held at the time ordinarily I wouldn't be the point of contact but the Commander - so Commander Brad Currie who is the Commander for Southern Command, was taking a night away from the community and he was away with his family, so he contacted me some time prior to that and asked if it was okay if I would be the point of contact for his team, to which I agreed and it was in that context that I received that call from Superintendent Nobbs.

Where were you at the time?---I was in Darwin. Where I actually was I - to this day I've racked my brain, I cannot tell you where I was. I certainly wasn't at home and I wasn't at work.

I see. You weren't rostered on that day, is that right?---No, I wasn't, no.

So you were effectively taking – you – taking that phone call because you'd offered to be on-call for Commander Currie, is that right?---In essence, yes.

When you got the phone call from the Superintendent, and you had a conversation about a number of things. And you set this out in your statement, it's not a memory test, Assistant Commissioner, and would it – would it assist you to refer to your statement to tell her Honour what information was passed on to you by the Superintendent at the time?---Look I can have a go at it and then – so the conversation that we had lasted for about nine minutes. And in that conversation, Superintendent Nobbs suggested that the police at Yuendumu required respite. There were only two police officers in that community providing community policing services, that being Sergeant Julie Frost, and Senior Constable Chris Hand. In that

same conversation, Superintendent Nobbs advised that there'd been a number of property related matters that occurred, that impacted on health staff properties, premises, dwellings, cars. And there was a suggestion, although there was no evidence to support it, that it may have involved Kumanjaya Walker. Kumanjaya Walker was still in – believed to be in the community, and he was at large, in relation to a breach of suspended sentence. And the incident that occurred on 6 November, that we've just heard about. The – there was a funeral that was to take place that day. And that there was an arrangement that post that funeral, that the community would surrender Kumanjaya Walker to police, in relation to those matters. And there was a requirement – so the health staff had either – had left, or were planning on to leave – on leaving the community. And the request was around providing additional support and respite to the two police officers in the community, to – to provide reassurance to the health staff to encourage them either to return, or to remain in the community. And to do that we required an additional police presence. In that conversation, Superintendent Nobbs indicated that he was suggesting that members or the IRT be utilised. Not because they were IRT members, but because they were more inclined to respond to a call for extra duty to assist the police at Yuendumu. And it was for that reason he suggested that those members be utilised. So I – members of the IRT, as opposed to the IRT itself. He also suggested that a dog operations handler and his dog also be deployed, to assist in that general support capacity as well.

The plan effectively, or what he was telling you was two-fold wasn't it, in terms of why those officers were required?---Yes.

One was support for the existing Yuendumu Police, to give them some respite?---Yes.

But there was also a way of – to assist to develop a plan to bring Kumanjaya into custody?---Yes, that's correct. So if there was additional support within the community to provide that community safety policing component, that would allow the sergeant then to focus on developing that plan around the safe custodial arrangements for Kumanjaya Walker.

So Superintendent Nobbs was calling you to have this conversation. Was he actually asking for your permission to send in members – additional members? That is, did you have to approve that?---So if we were looking at the deployment of the IRT as the IRT, yes. Because within the Standard Operating Procedure in relation to that team, the level of approval was either Commander, or a Territory Duty Superintendent. If it was just members of the general duties work force, that didn't require the level of Commander for that level of approval.

This was an odd hybrid - - - ?---Yes.

- - - because it was the – members of the IRT, but in fact not being deployed as the IRT?---And Superintendent Nobbs, I would suggest, was just being very diligent in his – the execution of that particular role. Because he was asking for members of

the IRT, and technically, if that's the way in which that was to be played out, then it required Commander approval.

And is it the case – well, I withdraw that. Had you ever had any experience where cordon and containment or IRT had been sent in as general duties, rather than in their – as they were intended?---Well they're – look, I hadn't had any experience in it, but that's the general support role. And that's a role not dissimilar to a role that TRG do take up. And it's simply, they're all front-line officers, or from an investigative team, and they're all – they're all trained as police officers, first and foremost.

Yes?---And they all have the skill to be front line police officers.

When the TR – well, is there ever a situation where TRG are asked to attend a community, in a general support role, rather than for a TRG purpose?---Yeah, absolutely. And – and I've been involved in – on many occasions where that's been the case.

In those circumstances, what rank has to approve the TRG going into a community?---I believe that's Assistant Commissioner.

When – and that would be the case, regardless of whether they were going in to assist general duties, or for a specific plan?---Yes, their deployment is governed under their particular General Order. And it's very specific in relation to their deployment.

Have you been involved in approving the TRG going into a community?---I've been involved in deploying the TRG, but whether it was to a remote community or not, I'm unsure. But I certainly have been involved in the deployment, the approval process.

When you are involved in the deployment of the TRG, would you be involved in the operational order?---No.

Who would develop it? Am I using the right terminology in terms of the paperwork that's done to set out the plan?---That – that is appropriate terminology, yes.

Who – at what level, what rank, does the operational plan?---It can be developed by people of – of any rank really, but it requires – certainly requires Superintendent and Commander endorsement, depending on the nature of what that is. If it's developed rapidly, then it's level of – it may not be a full written document is sort of what I'm getting at, if it's happening to be developed rapidly. If it's a written – full written document, it may have approval, signed and written approval.

You were – I think you told us earlier, you weren't involved in developing any standard operating orders for the IRT, and you had not in fact had reason to read them, prior to 9 November. Is that right?---Correct.

Did you anticipate that there would be an operational plan, for the IRT going out to assist with general duties?---No. But, I understood a plan was being developed in relation to the apprehension of – of Walker.

Who did you think was developing that plan?---The staff at Yuendumu.

Did you think that the IRT were in any way going to be involved in the arrest of Kumanjaji?---Not during that phone call at 1.51. My understanding was they were going out to provide that community-based support in relation to that criminal activity around the – the health staff premises.

Had you – were you concerned that the health clinic staff had moved out of the community?---Very. So it's an extremely important function for Yuendumu. For any community for that matter. That knowing full well the – the health issues that exist in remote communities, the – the health staff are extremely – the community's extremely reliant on the health staff to provide that support into a community. And if they are not there, then the community is vulnerable.

At any time when you were in Yuendumu or Papunya, had clinic staff moved out of the community in response to concerns?---No.

And were you aware of them ever moving – of clinic staff moving out of community, at any occasion, even when you're not working there, because of concerns?---Look I am aware of – of it being spoken of. And I do recall some issues at a community called Numbulwar. But we – we talked through that with the clinic management, and we were able to work through the scenario so that service was maintained within that community.

When you were speaking with Superintendent Nobbs, was it in your mind that they needed to get the clinic staff back into the community as soon as possible?---When I was speaking to Superintendent Nobbs, he was unsure whether they had actually left, or they were about to leave. But either way, to give them the reassurance that their safety was assured, would require that additional policing support into the community to actually provide that reassurance, to ensure that service could be maintained. Or if they had already left, have that service return.

Am I right that when you were having that discussion with Superintendent Nobbs about – at around 1:50 to 2 pm, there was, at that stage, no arrest plan for Kumanjaji?---Look, so if you go back to the email that Brad Currie had sent, it was clear that there was some loose plan around using Derek Williams for the family to have him handed in. I'm aware that the funeral was supposed to be Wednesday – sorry, on Friday and was postponed until Saturday. So, I don't recall the detail of what the plan was that Jody, Superintendent Nobbs may have provided to me, if at all. But I was aware that there was a plan being developed that was based around his negotiated surrender.

And did you believe that Derek Williams would be involved in his negotiated surrender?---So, I understood Derek was coming back on shift the following day, the

Sunday. And in my mind, it was going to occur when he was on shift.

Did anybody actually tell you that?---I'm unsure whether that occurred with the conversation with Superintendent Nobbs or not, but that's just my recollection.

You specifically recall a discussion with Superintendent Nobbs about the fact that there was a funeral and the arrest would take place after the funeral?---Yes.

Given your experience in community, you understand that funerals don't necessarily last just an afternoon or a day?---No. Well, so they are culturally significant events for the Warlpiri and for the relevant family groups. They – they're not defined by time. And this is a perfect example that it was delayed from the Friday to the Saturday. They don't start at a defined point in time. And they will go for as long as required to ensure that whatever culturally appropriate processes that need to occur, occur and that can take some time.

So, when you were told that the plan was to wait until after the funeral, did you think that the – that it was appropriate in terms of cultural sensitivities to wait until – for however long it took for that funeral to finish?---Look, absolutely. I didn't understand whether that person was involved in the funeral or not, but that's not necessarily relevant. It's more about the community and the police community relationship.

Do you recall that there was a discussion about Superintendent Nobbs wanted a patrol dog handler and a dog to be deployed?---Yes.

Why was that?---Well, so as I understood it, it was about that community safety aspect, specifically around the property crime that had occurred – that had impacted on the health staff, and that is what led to their fear and apprehension at that point in time and that was another tool available to us to create that community reassurance.

So, at that time, you believed that the dog and dog handler were going out in terms of general duties' support. Is that right?---Yes.

Nothing to do with the arrest of Kumanjayi?---No.

During your discussion with Superintendent Nobbs, was there any discussion about the type of weapons that the IRT members would carry?---No.

Did you believe that they would take anything other than their general accoutrements for general duties?---That was my expectation, but I didn't actually have a conversation with Superintendent Nobbs about that.

So, you did not think that they would carry their IRT gear, which is the AR15's and the other long arms?---So, no. So, what I was approving was members of the IRT, who were all general duties' members, to attend and assist at Yuendumu. In my mind, I wasn't deployed the IRT for an IRT function.

Do you think it would have been appropriate at that time to deploy the IRT in an IRT

function on the basis of the information that you had?---Possibly.

If it had been raised with you – I withdraw that. What would justify the deployment of the IRT?---If there was a – so, the way in which the conversation with Superintendent Nobbs and I transpired was, in my mind, the undertaking of a risk assessment in relation to that scenario. And I wasn't provided any information during that conversation that provided me with anything other than the need for additional frontline staff. If additional information was provided, then it may have justified a specific deployment, but that wasn't the request that was put to me.

No. And there's no justification, is there, for general duties' police to be carrying beanbag rounds - - -?---No.

- - - and long arms, is there?---No.

You wouldn't expect for general duties, AR15's to be carried around in the community?---No.

Do you accept that for community members in Yuendumu, seeing members – seeing police that they are unfamiliar with carrying long arm rifles would be frightening?---It certainly would have been confronting, yes.

And that, in the absence of any rioting behaviour, that that would be confusing?---I would assume so, yes.

And could serve to undermine the levels of trust that community members have in police?---Potentially, yes.

And it would create a level of apprehension, wouldn't it, that community members wouldn't know why police were there and what they were going to do?---Yeah, correct.

So, can I suggest to you, Assistant Commissioner, that it was wholly inappropriate for members of the IRT who had been deployed in a general duties' capacity to be walking around the community of Yuendumu after a funeral carrying long arm weapons. Do you agree?---It wasn't appropriate, no.

Your Honour, is that a convenient time to break? I'm about to move onto a different topic.

THE CORONER: Yes, we'll take the morning adjournment for about 15 minutes.

WITNESS WITHDREW

ADJOURNED



## RESUMED

TRAVIS JAMES WURST:

THE CORONER: Yes, Dr Dwyer?

DR DWYER: Assistant Commissioner, just before I leave that discussion that you had with Superintendent Nobbs at 1:51 to about 2 pm on 9 November, you've given evidence that you thought that having the IRT out there as general duties support would then give the community police the opportunity to prepare - or to finish the plan - the arrest plan, is that right?---Correct.

And it was your belief at the time that the arrest plan would likely involve Derek Williams after the funeral had finished, correct?---And/or appropriate community members.

In relation to bringing Kumanjayi into custody at some time after the funeral, was there any discussion of a risk assessment?---It wasn't expressly stated but the conversation that Nobbs and I - Superintendent Nobbs and I had, in my mind was stepping through a risk assessment in relation to that general support request.

Would you have assumed that the community police in Yuendumu would go through a process of risk assessment in relation to the arrest of Kumanjayi?---To an extent, yes. There isn't - and I know it's been worked on at the moment as an agency - a formalised process, it's something we do every minute of every day, as police officers.

Sure?---And it's constantly assessing and reassessing but a formalised written response - it's not something I did at that time.

It's the case isn't it, that some arrests are planned and some are unplanned in policing, correct?---There can be and there's different degrees of plan.

In this case, given the incident that had occurred on 6 November with officers Hand and Lanyon attempting to arrest Kumanjayi would you have anticipated that a risk assessment would be done prior to a further attempt to arrest him or was there not a formal processing place that would require that?---A process should have been undertaken, yes.

So not necessarily a written one but an informal risk assessment, is that right?---Yes, an assessment of the risk in relation to (inaudible) that apprehension, which is why, as I understand, it was being considered the way it was.

Was it in your mind that the members of the IRT who were going out for general duties would be involved in the arrest of Kumanjayi?---No, I wasn't aware that would be the case.

Looking back on this incident, do you consider that as a result of what occurred on 6 November in the attempted arrest of Kumanjayi, a subsequent arrest would necessarily be high-risk?---No, no necessarily.

Would it necessarily be a critical incident?---The arrest?

Yes?---No.

Can I come then to the night of 9 November. I will withdraw that. Just before I go on with that then I just want to put to you one of the - a conclusion that is reached by Officer Proctor in his report. Have you read the report of (inaudible)?---I have read the components that I understand are relevant to myself.

Just on the back of the evidence that you just gave, I just want to ask you about a conclusion he reaches at page 57 of his report. And that obviously I will ask Inspector Nobbs - Superintendent Nobbs about this tomorrow. But he says this, at page 57,

"The decision of Superintendent Nobbs to classify this incident"

- and he is referring to 6 November;

"as a critical incident and not a high-risk incident identifies a critical systemic issue for Northern Territory Police Force. The decision removed the requirement for Superintendent Nobbs to brief Assistant Commissioner Wurst on the incident and also for the opportunity to be reviewed and considered by the TRG Tactical Commander."

Do you agree with that or not, because it may not necessarily have actually involved high-risk, to bring Kumanjayi in next time?---I'm not sure the reference referring it to the TRG Tactical Commander is. I am aware that the term "critical incident" within the Northern Territory Police policy vernacular appears in two different locations. One is in relation to a critical incident from a welfare support point of view, the other is within a general order that has since been reviewed and removed but it was in place at the time, which was around major crimes, major investigations and the term "critical incident" was defined in that particular policy.

I see. I will leave that then for Officer Proctor and Superintendent Nobbs, but what are the current efforts being made to identify planning for high-risk or for - for risk assessment planning in arrests?---So, I understand and this is from information that I gleaned yesterday that there's work ongoing in relation to our agency-wide policy review process and specifically about the - some of the considerations that Mr Proctor raises in his report around risk assessment and then decision-making and planning and making sure that we're constantly reviewing our business to make sure, as contemporaries we can be as an agency for the support of our front-line officers.

Are you involved in any reforms or changes that should be introduced?---At a higher level I am, more around consideration of finished products, but I haven't been involved in this particular policy reform.

Can I come to the night of 9 November. Between your discussion with Superintendent Nobbs which finished some time around 2 pm that afternoon and the phone call that was made to you about 7:33, you didn't hear anything else about the deployment in Yuendumu, is that right?---No, I didn't. I had no other contact.

In your statement and in your interview you set out the circumstances that you were in that evening. You were at the Northern Territory Police Legacy Ball, correct?---I was.

You received a phone call from Superintendent Nobbs at 7:33 pm during one of the speeches?---Correct.

You muted that call?---I did.

You texted, saying, "Can I call you later"?---Yes.

The response from Superintendent Nobbs was, "No - urgent". You looked at that quickly and thought it said "Not urgent"?---Yes.

And then you received some text messages that let you know, pretty quickly that Kumanjayi had been shot, correct?---The next message indicated that Walker - I think it said, "Walker had" - or someone had been shot and I actually thought that meant "shot through" from the police station, ie he had been apprehended and had run away, but he said "No, he had been shot by police and he was at the police station so I quickly stood from my chair, left the room and rang Superintendent Nobbs and that was at 7:36.

This is all stepped out very carefully in your statement so I am not going to ask you to go through it again. I will ask you, what was your response - how did you feel when you got that message that Kumanjayi had been shot?---Automatically, I mean look, I'll be honest, you automatically kick into - into police mode, so to speak, so there's now a whole bunch of things need to be done, we need to get the operational plan under way and a command and control structure that exists over the top of such critical matters, so I automatically went to that, which was going - the conversation with Superintendent Nobbs, back into the room to have the people who were relevant to a response brought out of the - there was lots of people in that hall that were going to be important in that particular process and I got that whole process under way from that point onwards.

As it happened, there were a lot of senior police officers gathered together because of that social function, is that right?---Yes.

You quickly identified - got a notepad from the Double Tree Hilton, where the ball was being held and used that to record some notes?---Yes I did.

If I could just ask Bec now to put that on the screen?

You see there the note, "Operation Charwell", what does that refer to?---So, I understand at a point in time after this incident occurred, that was the – it's a police operational process, but a specific activity will be given a codename, so to speak. And the codename in this instance for the response which became, I believe, part of the investigative response was Operation Charwell. So, I've annotated my notes accordingly.

The first note there has the timing next to it, 13:51 and refers to the phone call with Superintendent Nobbs. You in fact wrote that note though some time after the call at 7:33 pm. Correct?---Look, I did and the time is – was recorded in my phone and I took that time from my phone at that time and then allowed my notes to flow from there. And obviously, that was the starting point.

So, around what time did you start these notes?---It did take a few moments for me to find someone to source that particular notepad for me, so it would have been only a couple of minutes after I received that call.

So, these notes are some eight pages or so. I'm not going to take you to each one, I'll just take you to specific incidents that you record there. At 19:56, you record – you write there, "Chris Hand advice was -", if you could just read that entry?---"19:56 Chris Hand advice was occurred H511-", which is a reference to House, "No medical staff -", I can't see that now.

At something at community?---"Staff --", yeah something, "at community".

At that stage, you understood that Kumanjayi was still alive. Is that right?---Yes, as I understood.

And at 8:15, you attempted to call ACPO Williams, that's Derek Williams?---Yes.

You knew Derek at that stage?---Yes, yes, I had a relationship with Derek.

And does that – is that because of your previous work in Yuendumu?---Yes.

Did you get through to Derek at that time?---No.

And very shortly afterwards, you attempt to call Officer Hand. Is that right?---Correct.

You have a conversation with him, where he says the community is still upset?---Yeah, so my notes say, "Hand: community still upset, armed, but being engaged with at 2:18."

So, I'll just stop there and ask you, at that time when Kumanjayi was still alive, were there any discussion of the fact that family members might be with him to provide some comfort?---So, I certainly did consider that in my response. But at that point in

time, I didn't consider that to be appropriate. However, at this point, I need to suggest that this was a really set of troubling decisions that were made from this point onwards around the way in which decisions that I ultimately was responsible for making, the impact they would have on the community going forward, regardless of whether Kumanjaya was to survive or not at that point in time. So, it wasn't part of my decision-making to consider allowing community members into the police station at that point in time because that had the potential that emotion may take hold of an individual and that could cause further concerns for the individuals who were outside of the police station. The police in the police station, as I understood at that time, were all focussed on delivering first aid and they were all very focussed and intent on doing what they could to support Kumanjaya Walker at that point. So, it wasn't necessarily a consideration.

Did you find out if there were family outside or nearby? This is while Kumanjaya was still alive?---So, the reference to being engaged with is a reference to Derek Williams being outside. Now, I didn't necessarily know at that point in time, the broader family structure for Kumanjaya and who his – although I knew the surname, that didn't necessarily mean that that was his family. And as it turned out, that wasn't the case. So, I knew that Derek Williams was outside, so - - -

You knew – did you know Lottie and Eddy Robertson?---I know them, yes.

You know that they're respected Elders in the community?---Yes.

Did you know that they were – that Kumanjaya was related to them?---Not at that point in time, but it became apparent over the proceeding hours.

Okay. And I'll come to your discussions around that shortly. It nevertheless - - -

MR BOE: Excuse me, can I just get clarification. Did you say preceding as in before?---Proceeding.

Or do you mean – sorry?---After.

Thank you.

DR DWYER: Given your experience of Yuendumu and your knowledge of that community, it would have occurred to you, wouldn't it, that Kumanjaya's family would be in the community and close by?---It's a fair assumption to make, yes.

And so - - -

THE CORONER: Particularly in light of the funeral?---Yes.

DR DWYER: If you had thought it appropriate for family to be with him to comfort him, it stands to reason, doesn't it, that somebody would have been nearby?---Within the community, yes.

Yes. Did you make an active decision that family or community members should not be allowed in to comfort him at that time before he passed, or was it the case that so much was happening that it didn't occur to you?---It wasn't an active decision that was made. It wasn't something that I necessarily turned my mind to at that point. We weren't requested for that to be the case. There was the opportunity, potentially, but what was happening in the police station, I understood was tense and high pressure in any case. And although I was – I had already started turning my mind to the potential implications for the community, the reaction from the community in relation to the fact that a community member had been shot by police and the way in which the community may react to that, beyond their reaction at that point in time, as more information became known to them.

Any member of the community, can I suggest to you, Assistant Commissioner, whose loved one had been shot by police would be incredibly distraught, that's fair, isn't it?---Absolutely.

And upset?---Extremely.

And potentially very angry with police as a result of what had occurred?---Yes.

That would be the case anywhere around Australia. Do you agree?---Absolutely. It wouldn't matter whether you were on a remote Indigenous community or not.

Do you agree that anywhere around Australia, it would be important to maintain some sort of line of communication, wherever possible, with family?---Yes, if you can and if it's appropriate.

In this case, when did you find out that Kumanjayi had passed away?---So, Derek Williams returned my call.

Yes?---And I was speaking with Derek and that was only a very short phone call. During that phone call, advice was received into the operations – sole operation centre that we had established, that he had passed away.

So, you received advice from another police officer, is that right, that he'd passed?---I couldn't tell you who it was. It was advice I was provided when I returned after the – I walked to a side room to have a conversation with Derek Williams and when I returned, I was provided that advice.

I see. After your conversation with Derek. Is that right?---Yes.

At that time, did you turn your mind to the fact that family would need to be advised?---Look, yes, absolutely. So, not only is there policy and procedure which governs the way in which police should create notifications to family and other agencies' entities, but there's also cultural obligations that were required in relation to the death that the community had the right to know certain things at certain points in time. So, that – I then had to make decisions around what that would look like and how those notifications would occur to the community about the passing of

Kumanjayi Walker.

Did you speak to Sergeant Frost at any time that evening?---No, I didn't.

Can I just ask Bec if you could put the second page up.

I want to refer you to a notation at 21:35. It's in relation to a call, well it says "Nobbs-call". So, that's the second page of that attachment. Could you just read that out loud if you don't mind?---"21:11 - call to Nobbs-need to get as many as possible on the plane, also get road support to Yuendumu. Understand decision to hold fast will not be well received, but support is being delivered as a priority."

So I'll just stop there and ask you about that entry. Firstly, Kumanjayi had passed away by that time. Prior to that, were you involved in any efforts to get medical attention to Kumanjayi?---I wasn't but I was aware – wasn't directly, but I aware that there wasn't staff at the clinic in Yuendumu, and the clinic staff from Yuelamu, which is a community not far from Yuendumu, had been requested. Now, whether they were there or not, I'm not sure. Were you aware that the Royal Flying Doctor Service were coming in or arrangements were made to fly doctors from alcohol?---I do recall that being referenced at some point, but the actual detail I don't recall.

Were you involved in any discussion as to whether or not Kumanjayi should be flown out of the community?---No, I wasn't.

Did you have a view about that?---The process that should take place was notification of the family in the first instance. But as soon as Kumanjayi had passed, our response changed; it had to change, because we were then dealing with, at its highest, and as is played out, as we're all aware, that we've got a homicide, and then there's a Coronial aspect to this as well. So, unfortunately, the pragmatic approach is that Kumanjayi and his body in the surrounds become, effectively, a crime scene, and they need to be managed in that context. Again, that's the police operational response. And then, once that's managed appropriately, then the appropriate notifications also need to be made to family and the culture obligations from a Warlpiri cultural sense needed to commence.

I'll come back to that shortly. Can I just go to a point before you speak to Derek at 8:48 and before you had found out that Kumanjayi has passed away, you note this: you understood a direction was given to staff in Yuendumu to evacuate the police station. That was while Kumanjayi was still alive; is that right?---I believe so, yes.

You quickly overturned that direction and said that all staff should remain within the policing facility, correct?---Correct.

You had initially understood, had you, that the decision to evacuate was to take Kumanjayi with police and to leave the community?---I not entirely sure how that decision was formulated and what the intent actually was other than to leave the police station. One can only assume he was going to go too. I didn't agree with that

decision, hence the decision to overturn and the language hold fast; the police needed to remain in that particular – in the police station and await support.

You take responsibility for that decision, is that right?---I do.

Why did you make that decision?---I was thinking more strategically about the impact on not just the police and Kumanjayi within the facility and the community members outside the Police Station, but if police left and that facility was vacant and - - -

A PERSON UNKNOWN: Excuse me, judge, I'd like to serve youse all with fraudulent behaviour. You have no right to actually continue on with this. No, no, hang on, get off me, you're only private security guards.

MS DWYER: Sorry, Assistant Commissioner, I'll start that again. You take responsibility for that decision. You were considering a number of factors, I think, on asking police to, effectively, hold fast; what were they?---So as – as I was saying that if police left that facility and they were to leave the community, that meant that there were no police within Yuendumu at all, and that would leave that community extremely vulnerable. That meant that the police facility, potentially, if the community took a particular course of action, could take over that facility. We would then lose control of the police station at Yuendumu. And the broader concern for that – that would mean then is there'll be no services in Yuendumu. As soon as there's no police, every other service, as Health had already done, would probably leave the community, and that would leave Yuendumu, as a community, extremely vulnerable and at extreme risk. The broader consideration in that regard was then what the reaction would be for other remote communities across the Northern Territory, particularly in the central desert region and more broadly, that if police left that community and the community, for example, were to take over the police station, I'm not to suggest that that was going to occur but that was some consideration that was made, then what risk does that place all those other communities in as well. So the direction was for the police officers to remain in that community, stay in the police station; however, to develop individual plans to evacuate as required if the circumstance warranted such action to be taken.

There are two periods I want to ask you about in terms of involving and engaging the family. One is the hour or so where Kumanjayi was in the police station and still alive, receiving medical attention. If I can ask you to assume that's sometime around from 7:30 to about 8:49; looking back on what occurred, you can appreciate, can't you, how the family must feel that they were not able to offer him comfort during that time?---Look, absolutely, extremely distressing then for the family and for – and now. Unfortunately, the decisions that were made were made at the time in good faith, and I support those decisions, based on the information that I had at that point in time. I know that the community then were hurting and are hurting still now to this day, and I accept and appreciate that. Unfortunately, in an operational context, they were the decisions that had to be made at that point in time.

THE CORONER: Can we just separate that out; there were two aspects of that. One was the decision not to allow any members of the family inside the police



station, but the second aspect is the decision, effectively, not to communicate at all with the family?---So I understand there was – so in my decisions and in – recorded in my decision-making was that a police officer was to go out and support Derek Williams at the front of the police station. And I didn't identify who that was; that was a matter for the officers at Yuendumu to do that themselves. I'm now aware that that didn't occur, for reasons unknown to myself. And so that goes to the question that you raise, your Honour, around communicating with the family. When I had a conversation with Derek Williams, that wasn't necessarily about sharing information, but he did tell me that he was communicating with Julie Frost, Sergeant Frost. I took the opportunity to speak to Derek about how he was feeling and how the community were feeling at that time. And it was during that conversation with Derek that he said that the community were angry and upset and they might hurt the police.

MS DWYER: You just said to her Honour that your advice was that a member of the police force, other than Derek, would go out, effectively, with him and elders and speak with the community?---To engage, used the term – my – I believe my statement and the language I used in my notes was "engage with the community."

And who did you give that advice to?---So that was a decision that was provided through one of the decision-making forums, and I believe it was to Superintendent Nobbs.

So was it your belief that that was happening at the time?---It wasn't happening, which is why I made specific reference to that for that to occur. But I'm unsure – and what happened with that particular decision or direction, and I now know that – that no one went out the front of the police station and was with Derek.

What did you think that that person could then tell the community or tell Derek?---Probably not a great deal at that point in time, given that it was still evolving and it was raw, but it was an opportunity for Derek to have some support; not to be there by himself in a role that wasn't just as a community – a Warlpiri leader but also he was there as an Aboriginal community police officer and he needed support in that particular regard. It was an unfair burden to place that all upon him.

And then after Kumanjayi had passed away, around 8:46 pm there was - - -

THE CORONER: Just before we move on.

DR DWYER: Thank you.

THE CORONER: Sorry. Was any consideration given to trying to get a family member, for example, on the phone and communicating more directly with a family member?---Not at that point in time, no it wasn't, it was more about trying to preserve life as it was, and then obviously once he passed we went into a - a mode around how we would take the next step and I am aware that Eddy Robertson was engaged with at times, through that period and provided some information but I am now aware that some of that information was incorrect.

DR DWYER: You can appreciate can't you, Assistant Commissioner, the level of frustration and anguish from the family, not knowing whether Kumanjayi was alive or had passed?

THE CORONER: And not just frustration and anguish about not knowing, but frustration and anguish about there being no line of communication?---So this goes to the heart of the decision-making process that I went through. Once I'd spoken to Senior Constable Hand and then with - the second time, so I spoke with Senior Constable Hand and I spoke to Derek and I spoke to Senior Constable Hand again. Derek had told me that he was concerned for the safety of police. Chris then told me that he had never been so scared in his life at that point in time and I had to make decisions around the welfare of the police officers that were in that particular police station. I then went to the knowledge that I had gleaned and gained from my exposure to being within that remote community and others and I was - I held the genuine concern that if information was shared with the community at that point in time in relation to the passing of Kumanjayi Walker that there was serious risk of the community reacting violently against the police within that facility and that the facility may be breached and the community members would try and enter the police station and as a consequence more people may (inaudible).

So that is a reflection on the passing of information and the timing of the passing of information?---Correct.

But could there not have also been a line of - at least a line of communication where the information being passed was being managed but at least there was someone in the police that the family could speak to, rather than being left outside and not having any communication at all?---So the problem with that at the point in time is I didn't know who that would be and my experience and I - this is not to be critical whatsoever of community members, but I have experienced people who are community leaders who, when they've been told certain things, have reacted very emotionally and if that were to occur with a person that we created a line of communication with, that could be misconstrued by the community and it could have triggered that particular negative reaction toward the police and the police station. It was a very very difficult time from a decision-making point of view about how to progress through that process. I understand what your Honour is saying, but it was one that I didn't know who that person could be and if we had've communicated with the wrong person by phone and that information had've been misconstrued or misused, that was the potential outcome that at my point in time as the decision-maker, I was grappling with and it's - I've grappled with it every day since.

And we are grappling with it now as well.

DR DWYER: Assistant Commissioner, just appreciating that you have grappled with it so much, is there anything that you feel could have been done differently? ---Yes, if we had've - see the challenge is - and people who are community leaders, when you tell someone that someone has passed there's immediate reaction - emotional reaction. Now that's not just confined to whether you're a person of Warlpiri descent or not but I know the way in which the Warlpiri will react to that

information and not knowing the right person to communicate with who may be able to control that information, was why I ultimately made the decision that I did around the time that transpired from the passing to sharing the information with the community. I knew that that was at odds with policy and procedure. I knew that was at odds with the way in which the Warlpiri should have been allowed to deal with the passing of one of their own in that context but we had all these other things we also had to consider as we stepped through this process and it was why I developed the plan which is in my notes and in my statement, to utilise a particular community member who - at a point in time I became aware that he was closely associated with Kumanjayi and it was why that that person was selected to be the person who was notified in the first instance - which was Eddy Robertson (inaudible).

I will come to that. I just want to start with 9:31 and if I could ask Bec to get that - your notes back on the screen there at 7144 but I think it's the version that Bec has there. 2135. The notation here is, "Nobbs called. Concern still held by members re remaining. Derek still engaging". What were you being told there was the behaviour of community members?---So obviously that was probably in reaction to the decision for them not to leave the community and they were all very concerned about their welfare and wellbeing.

I see, they were the concerns held?---Concern - yes. When I say "Derek still engaging" that was a reference, as I understand, to Sergeant Frost engaging with Derek in whatever manner that communication was occurring.

What were you being told, through our chains, about the way that community members were responding outside the police station?---So my direct advice from Chris Hand - Senior Constable Hand, from Derek himself and through Superintendent Nobbs is people were armed. There was a large gathering, up to 200 people and they were angry and upset.

Do you see that in your record from 21:35 towards the bottom of that records is "One member injured but treated by Yuelamu Clinic staff" - I withdraw that. I think that's in - that's Constable Rolfe. "RFDS en route and Air Wing"?---So, can I take you to the first dot point under "Decision" there?

Sure?---That's the reference that I made earlier that someone needs to be - to work with Derek, to engage.

So that was what you were envisaging - I withdraw that. You've noted that after a discussion that a staff member from the police would go out and work with Derek to engage?---As challenging as that would have been, yes, that was - so to putting it into context, I was sitting in a sanitised environment in Darwin and I was not at Yuendumu in that police station at that point in time but that is what I saw was the most appropriate thing for the police to do at that point in time, to support Derek, to support the community.

We've heard some evidence that in fact the level of frustration for the community - and anger - built the more that time passed without them being told what was going

on? So the nurse was injured after having travelled to the airstrip and then come back without informing the community what was going on. Do you appreciate that in fact the danger level increased by not having an effective communication with the community?---It's hard for me to say whether it did or didn't. It was such a dynamic situation that has never been confronted by that community or the Northern Territory Police, so the way in which decisions were going to impact on the community and the reaction of those individual decisions was very hard to determine and get a sense for in the location where I was. So, it's hard for me to make a comment in that regard.

Can I ask that you – that the court officer just show us the entry from 2206. It starts with a notation of “Structure”. So, if you just wind that down.

“Structure, POC Darwin” Is that how it reads?---Yes.

Police – it's the operations centre?---Police Operations Centre.

Thank you. And then you see there, “Engagement Williams, support Derek, ID Elders, main Elder --”, something in relation to the deceased.

THE CORONER: “GF”, grandfather?---Yes, potentially.

DR DWYER: Is that your effort to identify who then would be told about what had occurred?---Yes, correct.

Did you have any further conversation with Derek on the telephone after the one that you referred to?---No, I only had the one conversation at that one point in time.

And then there's a notification of two – if Bec scrolls down, the names of two Elders with phone numbers that have been redacted, did you speak to either of those persons, Otto(?) or Malcolm?---No. So, Officers Simms(?) is a Warlpiri Elder. Malcolm Worrell(?) is not. He was a person who was able to create contact with another Warlpiri Elder who has since passed.

Did you speak to either of those persons?---No at that point in time, but I did the following day.

And what was the purpose of your notation of their names and numbers there?  
---I believe they came through to me from someone on a text message and I wanted to keep a record of them for future use.

Can you go – if you just scroll down there, “Report a fire at the clinic”, where did that report come from?---Superintendent Nobbs.

“Nobbs’ decision by phone is not to respond. Sergeant Frost will contact community members to ensure they maintain their safety”. What was envisaged by that note?  
---So, I believe the text messages I got from Superintendent – received from Superintendent Nobbs were something about the clinic being on fire. But that wasn't

the case and we weren't going to respond to that particular report at that point in time, because of the safety concerns that were still live for the members at Yuendumu within that police station at that point in time.

What were the safety concerns at that time?---The fact that there were still numerous community members out the front of the police station. The community was still upset we hadn't provided information to them about the passing at that point in time and we were still developing all the plans around how the next steps would be taken to make sure that we were providing information to the community whilst maintaining the safety aspect around the police station.

I just want to scroll down to 23:40. So, "11:40 – decisions to be made. Advice to the community about the deceased, close family, advice to ACPO Williams if he doesn't already know." Was there a decision made at 11:40 that this was the point at which community and family, or some community and family would be told about Kumanjaji passing?---So, sorry yes. The intent was to do that as quickly as possible after that point in time. There were two things that that decision, and it's more – expressed in my statement in more detail, but in essence, two things had to occur. So, there were TRG flying into the community from Darwin. TRG were to come and provide that support to the community to then allow the notification to occur, but also the crime scene examiners, as part of the investigative team, had arrived in the community by that stage, I believe and they were conducting the appropriate forensic assessment of Kumanjaji having now passed before the community were to be provided access to him from an identification point of view or for anything else – any other purpose.

Is it the case that you were waiting for the TRG to arrive in the community before members of Kumanjaji's family were informed of his death?---Yes.

Why not tell Derek at some point prior to that and ask for his assistance in managing the family and community?---I was of a view that Derek was going to be told by – so, there was also another element that was playing out at this point. So, Sergeant Frost had been on duty for a long time. There was someone new that was coming into the community from Alice Springs who was going to take up the role of forward commander in Yuendumu and it was going to be that person's responsibility to make those notifications. So, that – I believe that occurred around this time. I was of the view that Derek was going to be notified at about the same time. That was the intent of the community Elder, but they hadn't identified Eddy Robertson.

Are you able to explain why Derek, who is a trusted member of the police force, was not told some time around 8:40 pm after Kumanjaji passed, that he had passed at that time and to receive his advice and guidance?---That's something that I again have grappled with and it's ultimately a decision that I was responsible for. And I'll be honest, and I've had this conversation with Derek, I didn't know how he was going to react. So, Derek is a responsible, professional, mature individual as a police officer. He is also a community leader. But this is information – this is a scenario that he'd never been confronted with and I didn't know how he was going to react. I also didn't know how his father was going to react. Even if though his father was

out the front of the police station, as I understood. I had seen his father react emotionally in the past. So, these were the variables that I didn't know the answers to that I was grappling with from a decision-making point of view, that each of those added elements of risk that I couldn't mitigate in relation to the police officers and Kumanjayi who were in the police station. I couldn't mitigate or ameliorate those risks sufficiently in my mind to allow that to occur. And my decisions were based on the fact that the risk, each time I reassessed it, was still outweighed by the benefit that would occur. And as hard as that is for the community to hear and appreciate, I unfortunately still have to stand by that decision, because I had – there was a lot more at risk or at stake in my mind than simply just the notification. Even though that's extremely important for the community to hear, I had – there was a lot more considerations to be – that had to be in my mind before I could be satisfied that we were at that point.

I anticipate that family or community might say, well it wasn't just Derek and his dad who were respected members of the community, but you also had the Elder Kumanjayi Nelson, who I won't say his first name, because he's passed now, you had Robin Granites and other community leaders. Was there consideration of involving the Elders and asking for their assistance at that time?---Look, yes. But again, I had seen community Elders in this circumstance react with emotion in my past experience across many years of being exposed to certain conflict-type scenarios. And that level of emotion which would be appropriate and expected from the community, may in fact caused heightened emotion within the community and that emotion was what was placing the police officers in that police station at risk. And that's why – again, grappling with that, grappling with what Derek had told me from his own mouth that he was concerned that they might hurt police. That is the level of risk that I couldn't, in good conscience, ameliorate in my mind to allow that notification to be made until there were plans in place to make sure that if there was a negative reaction, that the police at that particular facility were going to be safe, as well as the more – the broader community in that context.

At 2 am in the morning, there's a notation, I don't need to take you there, but in your briefing, number 3, "Update: generally unchanged, community quiet." So, at that stage, you received information, didn't you, that there was no threat to the police station?---The reference to "community quiet", I'm not going to take that to be that the police station wasn't under threat. I am assuming that if there were people outside, they were quiet or they had all left. I'm not entirely sure what that reference was.

The note under that is, "All decision ratified pending ability to contact Eddy Robertson". A decision was made that he should be the first one who was notified, is that right?---Yes.

And why was that?---So my understanding and how that came to be, I'm not entirely sure who actually told me. But I understand that it was determined he would be the most appropriate person to provide the notification to. However, am now well-aware that that wasn't the case, but I wasn't provided any other information to the contrary. I'm now aware that Eddy, for a number of cultural – culturally relevant reasons,

wasn't the right person and there were other people that probably should have been that person. Mr Robertson was contacted; he was made aware of the passing, but at that time, he didn't provide any addition advice about how further notification should take place; and then Derek Williams was notified soon thereafter.

When did you – I'll move through to make sure that I allow enough time for everybody else, assistant commissioner. When did you - - -

THE CORONER: Can I just –

Was Derek notified after Eddy; because in this briefing note, ACPO Williams was to be present, as I understand it, when Eddy was contacted, but that didn't occur? ---I believe that's the case, your Honour, it didn't occur. I believe he was notified after Mr Robertson was notified. That's - - -

Do you understand how these communication breakdowns occurred between what's in your notes and what was happening on the ground?---Look, no, I can't explain that necessarily. There was, in my mind, a plan that had to be executed. If I was to be honest, it wasn't particularly well-executed and there were things that occurred through the delivery of that plan that weren't part of the intent. ACPO Williams should have been told much, much sooner. I'm aware of this language in – and when he gave his evidence about betrayal. I can understand how he feels that way and the way in which those notifications occurred. I don't believe there was any – there – sorry, there was no malice or ill will or ill intent from any of the police involved in that process; it was just not particularly well-executed.

MS DWYER: You regard ACPO Williams as a very important member of the Northern Territory Police Force?---I do.

Very well highly respected?---Yes.

He'd done an excellent job to assist police and the community prior to 9 November, correct?---Yes.

He did a particularly outstanding job on that evening, do you agree?---Particularly on that evening, yes.

What do you do to try and restore the trust with Derek?---I've spoken to Derek on lots of occasions over – since that – that time. Every time I've gone back to the community, I've gone and sought Derek out. I've spoken to him multiple times; I actually spent – during the criminal trial, I spent quite a considerable time with him and his family. Derek has a sister that lives in Darwin; so I spent time at his sister's house with them. I'm aware that Derek has reached out and has lots of other support from other people. I actually took the commissioner to visit Derek when he was living at Hermannsburg at that point in time. So maintained that professional relationship with Derek so that he knows that it wasn't directed at him or his community, the decision-making; it was – it was about a point in time, and it wasn't for any other reason.

THE CORONER: If you were concerned about Derek's reaction, couldn't he have been brought into the police station?---I understand, from information that I read yesterday, that he was given that opportunity but he chose not to.

He wasn't given the opportunity in the sense of being offered additional information, and it was very early on, I think, when he decided to stay outside. But later on in the evening, couldn't or shouldn't there have been further attempts to either send someone outside to support Derek or bring Derek inside so he knew what was going on?---In hindsight and in my conversations with Derek after this all transpired on that night, that he should have been provided more information. But, in hindsight, I can't – unfortunately, I can't undo that. I know – I now know that Derek would have reacted in a – in a sense that wouldn't have caused alarm, having spoken with him, but I couldn't be sure of that at the time, given that – and my experience was that emotion can overrun the practicalities of dealing with these scenarios.

MS DWYER: Assistant Commissioner, I'll just come to a different topic. When we you first in the community after Kumanjayi's tragic passing?---So I arrived at Yuendumu at, I think at 10 o'clock/10:30 that Sunday morning.

And who were you with when you arrived?---I was with the Acting Commissioner, Mr Michael Murphy APM.

Did you meet with Derek when you came out on that day?---I did but not – not directly upon my arrival, but I – so when I went to the community meeting at the basketball stadium, Derek – I met Derek then and his father and others, a myriad of other individuals.

At that time, the community expressed concerns about what had happened, correct?---Yeah, absolutely.

And you could appreciate why they would be extremely upset?---Of course.

At that time, members of the TRG were in the community. Did you give them any directions as to how they were to conduct themselves?---So on the plane flight to Alice Springs from Darwin, there was a sergeant on that flight, Sergeant Meacham King; he was going to be the tactical commander, group leader, and I took the opportunity to sit with him and have a conversation about what I expected of his leadership at Yuendumu, and it was one around community engagement and a passive response to the community based on what had occurred. He was the sergeant that was going to lead that team. I didn't have any other conversations with the other team members as such.

Did the community make any complaints to you as to the way the TRG were conducting themselves after Kumanjayi passed?---Not to – no, not to myself personally.



Do you agree that the community were extraordinarily calm when you came out, given what they'd been through with Kumanjayi being shot?---Look, I must say, and I've said this to the community themselves, that the level of restraint and maturity that the community showed, I certainly underestimated; it was not what I anticipated. They've behaved in a manner that's – that they should be commended for, and it could have been very different. My decision-making was based on the exact opposite what occurred, unfortunately. And that's why I talk about the hindsight that I now have, unfortunately. And I have spoken to community members about the way in which they responded to that scenario, and continue to respond.

Doesn't this tragic event underscore the importance of police developing really good relationships with elders and emerging leaders in the community?---Absolutely, and even – even with my – my knowledge, I still made decisions that, in this context, that are being scrutinised, are going to be seen as incorrect or inappropriate, but it was very much based on – on those relationships, and there are other things I potentially could have done, but you cannot – you cannot discount the value that those relationships provide everyone, from the rank of constable to – to my rank of that of the Commissioner.

I take it, Assistant Commissioner, that you have ruminated on decisions that you made over the years that followed?---Yes, absolutely.

Does it take its toll on you as a senior member of the police force, having been involved in the situation where you didn't tell the community what - - -?---Look, I have. I mean, I – I took the opportunity in the days, after the decisions that I made, to sit – I was invited, and it was a privilege to be invited, so – into the sorry camp and particularly to sit with the senior men. And it was in that group that I took the opportunity to talk through some of that decision-making. And even in that small confine, amongst that small group of leaders, elders, there was – there was angst and anger toward me, which I understood. Yes, I – I've – I've grappled with that ever since, knowing full well that the cultural responsibilities of the family on the passing are – are a complete juxtaposition to the way in which we had to - ultimately, the decision I made were how we'd managed that particular scenario. And that's something that I'll have to – that the findings of this particular process will be handed down, but it's something I'll have to live with.

In relation to any findings her Honour makes, and recommendations, I – I take it that you would take them on board and - - - ?---Of course.

- - - and consider them in terms of how to respond to any critical incident in the future?---Yes, but I say that it needs to be balanced against the information that's relevant. To simply say you must, in any scenario, is not necessarily going to be the right approach. Because our policing procedure that we must have done things in this instance, and made decisions to move against that policy and procedure, for the reasons I've already articulated.

Assistant Commissioner, I asked you earlier about what happened in 2010, when there were some family disputes in Yuendumu. And the availability of trauma

counselling. Do you agree that the community has experienced a terrible trauma with the death of Kumanjayi?---Absolutely.

Do you agree that there needs to be trauma counselling provided, and available to that community?---Yeah, definitely.

And that in fact, the availability of trauma counsellors in the community would – is likely to assist police to work there?---It certainly – it certainly wouldn't harm the police community relationship.

More than that, can I suggest to you, that it is essential that the health and well-being of the community is looked at now, in the light of the traumas that they have experienced, and that every effort is made, to provide them with health services? ---Well that's extremely important for the community, yes.

In terms of the police, many of the conflicts that they have to deal with involve people who are traumatised, do you agree?---Look I don't – so trauma is a – is a very relative word in a community context. Everyone has probably been through some form of trauma, whatever that looks like. And the majority of the people that we engage with on a daily basis, regardless of where they are in the Territory, have been involved in some form of trauma. So when we're talking specifically about Yuendumu, then the answer's yes. Some, if not all of those people, have been exposed directly, or indirectly, vicariously, to some form of trauma, at some point in time. Whether that be, as you spoke about the – the negative legacy associated with Coniston, or anything else that they've experienced, directly, or indirectly in their lives.

Which include, in some circumstances, the riots that occurred in 2010?---Of course.

Subsequent conflicts between then and 2019?---And prior to that as well.

And the tragic events of 2019?---Absolutely.

Do you agree that having health services that help the community to address that trauma in fact assist police?---Yeah – look yes. And it'll assist police. It'll assist the community in understanding and dealing with their own feelings and emotions, as a consequence of that event, and any other event that they've been exposed to. And that positive interaction will allow, hopefully future positive interactions to occur with police. And sometimes, when I say "positive" it will be at a – in a negative context, but hopefully there's a positive outcome.

We read somewhere in the police materials about trauma informed training being made available to police. Is that currently underway?---I believe it is, yes.

Is it training that you, yourself have undertaken?---No I have not.

Assistant Commissioner, can I just ask you about two short topics, and then I'll finish. The General Order, a death in custody, and investigation of serious incidents, and fatal incidents resulting from police – contact with police, provides at par 15,

“That the senior member will ensure that the scene is secured, firstly. And also they'll ensure that all witnesses to the event are identified, and communication between such witnesses is prevented, and arrangements are made for their immediate segregation, particularly any police members.”

That was a General Order that you understood clearly prior to Kumanjayi's death, correct?---Yes.

In this case, who was the senior member responsible for separating police, to the extent possible, after Kumanjayi died?---It would have been Sergeant Frost at Yuendumu Police Station.

And then following Sergeant Frost, it would have been the Forward Commander Zang, correct?---Yes.

And then it would have been the lead investigator, Officer Phillips, when he took over, is that right?---I don't believe he went to Yuendumu.

No, but after Yuendumu, there was still - - - ?---Yes, sorry, yes.

- - - after – for example, we know that Constable Rolfe and other police officers worked to try and save Kumanjayi after he'd been shot. And Kumanjayi was then – stayed in – his body stayed in the police station, and Constable Rolfe was extracted from the community. There was then an opportunity for Constable Rolfe to speak with other police members when he arrived in Alice Springs, correct?---Yes.

On Monday evening, the – in November following the events, a social gathering occurred at Constable Rolfe's residence. Prior to a statement being taken by Constable Rolfe, that gathering occurred, which included members of Constable Rolfe's patrol group, police friends, and fellow IRT members who'd been at Yuendumu, with Constable Rolfe, when the shooting occurred. Do you agree that that was in direct contravention to the General Orders, which required a separation of police?---So I – I just said yes to a question – your question prior. But I'd actually like to reflect – can you – so putting that question aside - - -

Certainly?---The question you asked prior, that I said yes to, could you go back to that question please?

Certainly. I think in terms of the senior member, the General Order talks about the senior member - - - ?---Mm mm.

- - - will ensure the immediate segregation, particularly of police members involved in the incident. I'm not asking you to reflect on the separation of police members when Kumanjayi was first taken in the station. It's clearly understood that preservation of

life and first aid had to be the top priority there. After Kumanjayi had passed away, do you agree that every effort should have been made to separate the involved police officers?---Yeah – yes, yeah - - -

And the purpose of that is to make sure that they don't contaminate each other's account, correct?---Correct.

And that can happen, either inadvertently, because it confuses your own memory by talking to another witness, correct?---Yes.

Or there can be deliberate interference, where police officers might get together and talk about how they're going to present their evidence?---Yes, that's a risk, yes.

And whether they do that or don't, the public needs to maintain confidence, don't they, that police officers will be separated, and there won't be contamination of their evidence?---Yes, correct.

And in this case, where you've got a situation where there was going to be an investigation to determine whether there was a homicide, an unlawful killing, it was absolutely essential, that Constable Rolfe, be separated from other IRT members who he was with at the time of the shooting, correct?---Yes.

And what we now learn is that on the Monday evening, after the Saturday night when Kumanjayi was shot, a social gathering occurred at Constable Rolfe's residence. A statement had been taken from some members of the IRT, but not from Constable Rolfe. And in that context, a social gathering involved Constable Rolfe, fellow police officers, and the IRT – some IRT members who'd been in Yuendumu, with him, that was wholly inappropriate, wasn't it?---In the context of – of that information, yes.

And it was in contravention of the General Orders, correct?---Particularly in relation to Constable Rolfe, who hadn't been – hadn't provided a statement at that point in time, yes.

And it had the potential to contaminate the version of events that Constable Rolfe eventually gave - - - ?---Yes.

- - - in the trial?---Yes.

And to this day, we don't know the extent to which that contaminate his evidence. Do you agree?---I'm not sure, but it's a fair assumption to make.

Well there's no independent way of verifying that, correct?---No.

Do you know whether or not any of the officers who were involved in attending that social gathering had been either disciplined or spoken to, about the fact that they went there?---No, I've only become aware of that this morning, so I'm not aware of any outcomes from that.

In relation to the text messages I asked you about earlier. I asked you about the fact that a sergeant was involved, and you said that you were extremely disappointed to learn that. In relation to those text messages, the sergeant, I can tell you, used the term "Bush coons." Do you know whether or not that sergeant has ever been disciplined as a result of that?---I'm unsure.

Do you agree that as soon as possible, after those texts came to light, he should have been disciplined?---Certainly, some appropriate action should have been taken, yes.

Final topic for you is the - - -

THE CORONER: What do you consider to be appropriate action?---Well if discipline is an option that's available, then that's the starting point.

DR DWYER: I'm going to ask you – I'm going to show you the – can I ask you please at this stage not to read the name of this officer, because it's subject to a non-publication order – non-publication order. But I'll just show you page four of MFI C. If you could just read to yourself those text messages. Tell me when you get to the bottom of that page, Assistant Commissioner. I am not going to read the name of that sergeant. Have you read that exchange prior to today?---Yes, I have.

When did you first read it?---Last night.

And it was brought to your attention by your legal - by the legal representatives to the police, is that right?---Yes, correct.

This is an exchange that occurred on 9 July 2019 between Constable Rolfe and the sergeant and it includes Constable Rolfe texting the sergeant, "Yeah, the bush cops would never have been able to get him - impossible for them" - he's talking about they've had a run after someone and then, "So it was good we went - the bush cops fucked up as usual but that just meant we had a run instead of getting him cordoned properly so it's all good. He was fair racket". And the sergeant replies, "Good job, I'll let Nobbs know the details. I want to do a lot more of this stuff. That's a couple we've got for Nobbs". Constable Rolfe, "Yeah, I'm hell keen, it seems he's getting on board." The sergeant, "These bush coons aren't used to people going after them." Constable Rolfe, "Yeah, bush cops blow my mind. I'll tell you about these dudes when I see you." Have you ever heard any expressions like that, firstly about bush cops?---No.

And you see now the context in which the sergeant used that offensive term, "Bush coons". I just want to - I used the term "offensive" what do you think about the use of that term by a sergeant of police?---Well, that particular term is disgusting. It's inappropriate. It's not the language of our agency. It's not the language of our community. It's not reflective of who we are and I don't condone that language at all.

What do you think that would be appropriate - in that context then what is the appropriate sanction when that exchange come to light?---Well, as I sort of indicated before, that discipline is a starting point.

Are you able to say, sitting there now, what is the appropriate discipline?---Look, I - no, because I'm not aware of the individual, their background, the other information that may be available. There's lots of requirements in that disciplinary space that it's - it's not one dimensional.

You need to have a look, for example, about whether or not a complaint has previously been made about that person. Do you agree?---That's potentially relevant.

Is it also relevant that they hold a particular rank which requires them to show leadership?---Absolutely.

And you'd need to act quickly, wouldn't you, to ensure that that sort of contamination and inappropriate behaviour does not continue from that person in a position of Sergeant?---Mm mm, to stop that from influencing members of lower ranks - absolutely.

And do you agree that to have a sergeant use that language can, in fact, result in a very negative and dangerous culture growing in a station?---Absolutely.

And it can sanction racism, in effect, if someone of a rank of sergeant is using that language?---Yes.

The final topic is this. You're aware that Superintendent Scott Pollock was appointed at some stage as the lead investigator of the Coronial investigation?---Yes.

Into the death of Kumanjayi. Do you agree with me that he has had a very distinguished career in the Northern Territory Police?---Yes.

He is, at the time of his appointment, was a highly respected superintendent?---Yes, yes he was.

And he had been involved in a number of high profile investigations in the Northern Territory?---He had been.

And he had been the subject of an expression of gratitude and compliments from the former Coroner, Greg Cavanagh in relation to his work, for example, on an inquest into the death of Kumanjayi Briscoe?---I'm not aware of it but I know that particular outcome, yes.

And that fits with your understanding of - or his experience in the Northern Territory? ---Yes.

At some point are you aware that an officer with the surname O'Brien was appointed to oversee the Coronial investigation that Scott Pollock was undertaking?---I was aware, yes.

Do you know why - I withdraw that. What rank was Officer O'Brien at that time?---A commander.

Do you know why he was appointed to oversee the investigation?---No, I wasn't part of that decision-making.

Did Superintendent Pollock speak to you about the fact that Commander O'Brien was appointed to oversee the investigation?---He did.

When did he do that - I withdraw that - just going back a step can you recall roughly when Commander O'Brien was appointed to do that?---Look, no, other than saying it was within 2020, when I was the Chief of Staff at the Commissioner of Police.

Do you know whose decision-making it was to appoint Officer O'Brien - or Commander O'Brien over the top of Scott Pollock?---No, I wasn't aware of who actually made that decision.

Superintendent Pollock came to speak to you about that fact?---He did. And what was that conversation?---He raised that that had occurred and he referenced the Coronial finding that he wasn't sure whether the decision-makers were aware of. Once he had provided that information to me I shared that - those Coronial findings with, I believe, the Assistant Commissioner at the time - in charge of crime.

Who was that?---It would've been Assistant Commissioner Mick Anticich APM.

And the findings you referred to are the findings in the inquest into the death of Sasha Green, is that right?---Correct.

And it's the case isn't it, that the former Coroner, Mr Cavanagh was critical of the investigation that had been done by Commander O'Brien in that matter?---Without re-reading the findings, it was - he was specifically mentioned by the Coroner in relation to that investigation, yes.

The Coroner was disappointed with his efforts in that regard?---I believe that's the context, without having read it again recently.

And is it the case that Superintendent Pollock brought that to your attention?---He did.

And then you passed that on to Assistant Commissioner Anticich?---Yes.

And what occurred after that?---Well, I understand that a decision - a further decision was made and Commander David Proctor APM was placed into the role that O'Brien had previously held.

And that was as a result of Superintendent Pollock bringing those matters to your attention?---I don't know whether that had anything to do with the decision but I suggest it may have.

And because your role in that was to pass that on to Assistant Commissioner Anticich, is that right?---Mr Pollock came and spoke to me about it and based on what he told me I was duty bound to share that information because in this context it may have had ramifications.

Nothing further, thank you, your Honour.

THE CORONER: I note the time.

We will adjourn until 1.30.

WITNESS WITHDREW

ADJOURNED



## RESUMED

TRAVIS JAMES WURST:

THE CORONER: Mr Boe.

MR BOE: Thank you, your Honour.

XXN BY MR BOE:

MR BOE: Assistant Commissioner, my name is Andrew Boe, and I'm one of the barristers appearing for the Walker, Lane and Robertson families. And you would know that that covers, for example, ACPO Williams and I understand that there was a senior member from Kintore that was here from the Lane family. He may come back in. So I've got a few questions covering four issues, on behalf of the families. And after that, if I have time, in which has been allocated to be, I just want to cover some of the things that you spoke to Dr Dwyer about?---Sure.

I don't propose to spend much time at all on the events after the shooting, which has been covered a fair bit already. You understand?---(Inaudible).

And when I'm asking the questions, I'm assuming that you have some prior knowledge about some matters. If you need more information for context, please ask me?---I will.

We heard, if I may say, and appreciated, that you are a senior police officer who's had an extensive exposure to Warlpiri culture. And – and one of the – two of the things that you said, which I wanted to ask briefly about, is that despite all your attempts and your genuine engagement, you still felt that you had much more to learn, and you described it as a deep and complex culture, with unique – unique attributes to it. The second thing you conceded, near the end, was that in terms of making some of the operational decisions on the night, that you had carried with you some assumptions about Warlpiri culture, of which you have now been disabused. I'll use the example of that the assumption that the community, and specific people, might not behave in a controlled way, had they been given information on the night. You know what I'm talking about?---I am, but that's not what I said. That's not an assumption that I made.

I thought you made an assumption, that you weren't sure of how Warren Williams would behave, and you'd referenced an earlier occasion of him having behaved in a way that was not controlled. That's one of the things I was talking about?---Correct.

And secondly, you made an assumption, despite you knowledge of Derek Williams, that may not – it would be risky to give him information, for example, because you weren't sure how he would respond?---Assumption is your word. Decision is my word.

Right. Now just dealing with the issue of the accumulated knowledge, and what

I want to mostly speak about is foresight, rather than hindsight. That is foresight, going forward. We're now – we have the benefit of hindsight in examining behaviour. What I'd like to direct your mind to is what – going forward with that sort of information. Firstly, in so far as the recognition, or your knowledge, about the respect to be given to sorry business, okay. Now you had quite a lot of understanding of that, even before the night of the events of this – this shooting. Is that correct?---Yes.

We've heard evidence so far, that talks about various people, including Senior Constable Hand, Sergeant Jolley, and others, including Sergeant Frost, about that notion of taking into account the existence of sorry business, in terms of operation decisions, especially when the tasks were not urgent. For example, if it's not urgent to arrest a person there and then, then there's – thought should be given to deferring that action until after the funeral. You're nodding?---Yeah, I understand your premise.

So in this case, the – the application of that knowledge wasn't necessarily fulfilled. You accept that?---In relation to?

For example, the arrest attempt on 6 November?---You – you've lost me.

Well, they went and arrested him, when we all know, that his grandfather was being buried that week, and that he had special obligations in respect of that funeral?

MR EDWARDSON KC: Your Honour, I object to the question, because at the time that - - -

MR BOE: I'm going to get to that, because they didn't know.

MR EDWARDSON: - - - (Inaudible) was arrived at, that knowledge didn't exist.

MR BOE: Yes, I'm going to get to that.

The proposition is two layered. First is, one you've got to know of something to take into account, correct?---Yes.

Hand and Smith both say, that they did not know of the funeral, okay. If we acknowledge however, knowledge of that sort of situation is a necessary part of making decisions. The first feature is why did they not know. Do you understand?---Yes.

And we've spoken to Sergeant Frost and Jolley about a system perhaps being in place, that the OIC, at least, is aware of the existence of sorry business, so that all in their command can perhaps take that into account on non-urgent business. Would you agree that that's a good thing to put into place, that?---Look, in – in theory, yes - -

Why just – why just in theory?---Because the information needs to actually be shared, and that's the challenge.

That's the point?---And it's the – it's a two-way challenge. It's not just the one directional challenge.

One of the things is you need to have a system where people in community feel comfortable in community, telling you, and engaging in that sort of consultation. And secondly, what you do about that, so all your members are aware. Do you have in your mind, any suggestions, how we might achieve the situation that – the sort of knowledge that you accumulated in your engagements, of which you spoke about instrumental role of Elders and ACPO's, et cetera, how might we achieve, going forward, that that bulk of knowledge you've acquired, is passed on to each officers and officer in charge of a station with these sorts of issues?---That's a – it's a really good question. It's one that we're considering in the last 24 hours. And I know that there's some work being done about police induction documents, that are a written document that a member who's knew to a community, can pick up, read it, and it will give them some insight into the community context that they're walking into. That's one component of it. There needs to be community leadership as well. So people within the community, any community, not just the Warlpiri Community, Yuendumu Community, that are the points of contacts for new police, that will sit down and talk them through the cultural nuances of that location. I've indicated very early in my evidence that you can have broad ranging cross-cultural awareness, but each community is unique, and distinctly different, from a language and a cultural perspective. So each community needs to have – create that availability to – to the police, to be able to allow that to be a two-way process. To allow people to learn, and learn at their pace. Because different people are going to accept that knowledge in different ways.

Yes, and that's what I – early on in these hearings, I used the word “Corporate knowledge”, and what I meant was to make good of the accumulation of knowledge that people like you have, of 20 years ago, so that we're not starting at ground hog day each time a new officer in charge comes to a station. Do you understand what I mean?---Yes.

Yes, and that is, not just a general induction of the cultural matters, but general information about operational decisions affected by that accumulated knowledge?---So I'm not sure that a document like that will provide you information about operational decisions. Only so far as giving you some insight into the cultural nuances that you must consider in that operational context.

Yes, I'll just use two examples, if I may. The – the – there seems to be agreement across the board, that it would be ideal to not interrupt sorry business with police duties unless they're urgent?---I'd suggest that is actually what happens, Territory wide, in any case.

Well that's what I want to interrogate. Do you think nothing more needs to be done for that to be a factor to – that must be taken into account, in determining the timing

of operational duties? Do you think nothing more needs to be done?---I didn't suggest that. We could always continue to review and refresh the information that we make available to our police. I know that at times we've not conducted ourselves in a manner appropriate to the circumstances. Not at Yuendumu, in other parts of the Territory. The Territory again, is very complex and diverse. What happens in the Top End and the salt water is different to the fresh water, which happens differently here. So each particular station needs its own induction document, and information package. And that needs to be continually refreshed and reviewed, to make sure it's contemporary with the changing environment for that particular community. For example, any document that's relevant to Yuendumu, needs to now have some context around the events of November 2019, and what that means for the – for police in that community going forward, if you are new to that community.

The reason I raised that question, about whether more needs to be done, is that there's evidence in this court, from now Sergeant Hand, that he said that even if he knew that there was a funeral on, he would still have proceeded to arrest. So that's why I raise it with you. And you say, we do this across the Territory. There's evidence here, that Hand, who is a close colleague of yours, who you believe to have an enormous experience in working in this area, himself, was not going to do that. Do you understand why I raise the question?---I do, but that doesn't mean that because there's a funeral it doesn't change the community safety obligations of police.

And no - - - ?---It's a consideration.

- - - no doubt. But if we're always going to fall back to that, we'll get nowhere, with respect. He was saying, and accepting, that it was not urgent. You understand? And at that point in time, the only issue that Kumanjayi was being arrested for, was breaching a condition of a suspended sentence. So we can point to a needs to arrest people, but that circumstance, if I may suggest to you, really wanted – really needed, acknowledgement of the importance of sorry business, and it was not undertaken?---And as I now understand, the police didn't know about it anyway.

Well the point being, Commissioner – Assistant Commissioner, is that he said it would not have made any difference?---That's a decision that he made at the time. I wasn't there present. But I understand your premise.

And the premise being, we need to do more about this. And I'm inviting you to accept that?---Understood.

Okay. Can I deal with the second issue, which is the – your involvement in the deployment of the additional members to Yuendumu, on 9 November. Just cutting to the chase, my understanding of all your answers that you've given, in various forums, is that the only deployment you approved of, was for additional officers to perform general duties, and secondly, for the deployment of a specialist dog handler and trained dog. Is that fair?---That's fair.

You conceded at one point, that you felt that your conversation with Nobbs involved consideration of an abundance of caution as to why your authority was being obtained? I'm trying to paraphrase in a way to remind you, but there was something in your communications that you spoke about today, that you recognise that your authority was only required, if in fact, an IR Team was being deployed. Do you understand?---Yes.

In terms of the command structure?---Yes.

In so far as sending general duties, Nobbs could have done it himself, correct?---Correct.

So, the fact that you had sat in the position of Currie who would ordinarily be that person about the deployment of IRT, the fact that you had got into that position to have that authority, is it concerning that you were assuming that a decision-making power without knowing the SOP in relation to the decision that needed your mandate?---In that regard, I rely upon the knowledge of someone like Superintendent Nobbs to guide me through any concerns that he may have in relation to the decision-making. I did know that the incident response team approval in a general support sense required commander's approval or Territory duty service. I didn't know that anyway. But the intimate detail within that policy, outside of that, no I didn't.

That's a disconnect, isn't it. The person with the authority to deploy people with long arms, with serious weaponry, was vested in you. You were being contacted to get that formal approval and yet, you did not know of the SOP that applied? You had not read it?---No, I hadn't read it, but I knew it existed.

It doesn't help, if you don't know what's in it, does it, to make the decision that was being asked of you?---So, the decision that I was being asked to make was the deployment of general duties' police who are members of a particular team to that community.

I understand. One of the words you used in your statement is that, you used the word "Instant Response Team" at one point. Do you recall?---Did I?

You did, I suggest?---Giving evidence or today?

No, in one of your interviews. I can take you to it, if you'd like?---So, that may not have been my words. That could be a transcription issue.

Well, it may be, but it was coupled with this idea that the knowledge you had about them was they could be deployed quickly?---I don't know it as the Instant Response Team, they're the Incident Response Team.

THE CORONER: "Incident" instead of "Instant", I don't know.

MR BOE: You see, what's recorded as to what you've said, and I haven't heard the

recording, although others here have that the staff that he intended to deploy from Alice Springs were staff based in what's known as the Instant Response Team or the IRT. The reason for this request was that that group most likely allow for a timing and efficient response, because they're likely to answer the phone. To seek other staff may take longer". So, what I was suggesting to you is, I'm not picking you up on that word slip, it may be that you never used the word. But what was in your mind was that the advantage that those who were included in the IRT pool was they were trained to be able to be readily employed to move away from their general duties to attend an incident. Is that fair?---As I understand, yes.

And so, it's the accessibility of them that you were mindful of, that we could get them quickly and knowing that there was a time scale reference to the nurses leaving?---That was the advice that Superintendent Nobbs provided me, yes.

All right, thank you. Is it becoming apparent, the disconnect between your recollection and that which you know of Nobbs is that issue of communication between you and him was, at times, riddled with misunderstandings of what each was expecting of the other?---No.

Well, he was expecting, it seems on his evidence, an IRT deployment. You were thinking you were only being asked to deploy general duties. Is that not a disconnect?---I haven't heard his evidence, so I'm not sure what his evidence is.

You know what he says. You've read his material, haven't you?---No.

You've heard Proctor's criticisms of this disconnect?---I'm aware of what's in the Proctor report.

Yes. You're not interested in knowing whether or not you were at ad idem in your conversation and whether or not that process of communication should be improved?---So, the conversation that I had with Superintendent Nobbs, in my mind, was quite clear. What happened after that, I now know appears to have been different and unfortunately, I had no control over what happened after the approval was provided.

Let me be clear, I'm not trying to impart blame to either of you. I'm wanting to recognise, in your position of command, that if there was that sort of disconnect, that's something that needs to be addressed into the future?---That, I don't disagree.

Yes. One of those things is what's in fact in the SOP is that the operational requirements are put in writing by the officer in charge seeking that information, so that the decision being made by those you've deployed know exactly what is being sought and you can make your own judgment of whether what's being sought should in fact be deployed. That's fairly obvious, isn't it?---It sounds obvious, yes.

It didn't happen, correct?---Well, I now understand there was things put into writing.

You never saw them?---Not at the time, no.

You never even saw the arrest plan?---No, I didn't.

So, what we needed to put into place so the person in your position of authority of deployment doesn't miss these sorts of important communications in making these decisions into the future. What do you think should be - - -?---What was that? Sorry, I thought that was a comment.

What do you think needs to be done to remove the possibility of this sort of informational disconnect for deployment of personnel such as IRTs and TRGs into the future?---So, I'm not going to talk about TRG, because that's a well-defined process. We're talking about the IRT. IRT doesn't exist anymore. It has been disbanded, as I understand. The way in which that scenario occurred that day and what happened after that, the only thing that may have changed that is the conversation would be distilled into writing, but other than that, I have little further to add.

You see, all of these situations that might necessitate a team like an IRT or TRG will always necessarily be in frantic, urgent circumstances, won't they? They will be very - - -?---Not necessarily.

Not necessarily, okay. Well, some will be?---Potentially, yes.

Like on this night, everything is happening whilst a lot of protections in place in your system were being challenged. That's fair, isn't it? People on – at dinners, people away from their command post. Do you not think that there needs to be some examination internally to put into place things that will actually work?---And I've already indicated to the court that there is a process that's been developed in relation to creating an enhanced risk assessment process for police. And I am aware that some additional evidence will be provided to the court in due course in relation to that. It's not something that I've been involved in, so, I'm not really in a capacity to speak to it in detail, but I understand the court will be provided with that information in due course.

Because of time, I've got two more issues I want to quickly cover. You've heard even before this inquest, that the Warlpiri community in Yuendumu have got a very strong position about them being very frightened of guns in the community held by police. You've heard that, haven't you?---Since this event, yes.

Have you heard any of the evidence in this inquest about that?---No, I haven't.

May I just tell you very briefly that there has been evidence that's been accepted as sincere by many of your colleagues, if not all, that the people in the community do not wish community police to carry Glocks, okay, that's one thing?---Mm mm.

The second thing is that they expressed that they are very frightened when police carry Glocks in the community. Would you accept from me that that's evidence before - - -?---I take your word for that.

All right. If that has been expressed in this court, would you accept that it's sincere?--It's sincere in – I don't understand.

That they are scared of guns being used by police in the community?---The Warlpiri at Yuendumu?

Yes?---If that's what they suggest.

One of them was Ned Hargraves. He gave us a speech in the beginning and he spoke specifically about that. And you know Ned?---I do know Ned.

And when you know he expresses that, you know that it's a sincere feeling that he has - - -?---Understood.

- - - for his community. When you're talking about being aware of community sentiment on an issue like that, is it reasonable to connive of a way to address those concerns, from a police perspective?---Connive?

Well, to think of, conceive, to process what we might do, given that we're policing in a unique community. They have a unique history that we've spoken about, Dr Dwyer took you to the Coniston scenario where interactions went between police and community, and even now, you've recognised that we need to take into account these events of the 9th – of 2019. Would you be open in your area, given your seniority, to having a further discussion about the mandates of s 9 of the Use of Force operational orders that are in place?---And what is that?

Which is generally that all police officers must wear all weapons attached to their accoutrement belt, meaning community police must wear Glocks when they're policing in the community?---I don't support any change to that particular policy.

Are you open to conversation about that, given what we've heard about what the Warlpiri community - - -?---I am happy to have conversation but it won't, I would suggest, change my view in relation to the importance of police being able to fulfil their duty with all of the use of force continuing - items - and tools available to us.

Well, do you take into account the evidence, including from you, that in all your years of policing you've never had to draw your gun?---I'm lucky and unique in that circumstance. Other are not.

Every police officer that has come in here to give evidence, with 20 years experience have all said they've never had to draw their gun?---That's fantastic and I'm very pleased that their environment has been such that that's the case but it's not the case for every Northern Territory policer unfortunately.

I am not asking for a consideration for the entire Northern Territory, I'm asking for consideration to make decisions affecting a particular community or a number of



communities with this evidentiary basis. Do you understand what I am putting to you?---Yes.

And you've accepted that - you're saying that you've got a firm view, you'll talk about it but you're not going to change, is that what you're saying?---No, because the risk at that Yuendumu community - if that's what you're talking about - can change in a moment's notice and that places the police officers who are there with the express intent to maintain community safety. If they cannot do that then their job becomes redundant and part of the requirements is for them to be able to access lethal force in the event that it is required.

I understand. One of the - if I may say - wonderful things that you did do following 9 November, was (a) be invited to and (b) actually attend, some of the sorry business and you know that that was of great - was received very warmly by those who you know in the community. Do you understand?---Yes.

You were there as a police officer?---I was.

Did you wear your Glock in that time?---No, I did not.

On what basis did you not comply with the operational order that you must wear a Glock when you are on duty?---Because I didn't have time to get to the police station, to the armoury to get my firearm, to get it packed, to get to the airport, to get to Alice Springs to Yuendumu in time.

All right, but you're allowed to not comply with that?---I was well aware that I was noncompliant and everyone that I drove around with during - in that community, I talked to them about the fact that I didn't have a firearm on and what we would do if there was a situation that required us to use any level of engagement and/or force.

And this was the situation in which you've used an example when there's heightened emotions in the community, at which time anything could happen?---If had've had the opportunity I would've much preferred to have my accoutrements with me.

Were you aware of the fact that there were TRG in the community at the time you were?---Yes, I was aware.

And did you have any role in deciding what weaponry they would use in the community?---No I did not, other than the evidence I've already provided in relation to the passive community safety and engagement aspect.

We've heard that - and it's unreliable if I may say, that the TRG did bring guns into the community but they were left in the station at the time that they were patrolling. That is sort of not clearly evidence, there is competing evidence from other people. May I show you this picture. I have given a copy to Bec and could this be displayed? It's the - this one here. It's a screen shot. Your Honour, I have five minutes left. Plus injury time. Can you see that picture on your screen?---Yes.

Can you recognise who that officer is?---No, I don't know who that is.

Do you accept that that is a longarm of some sort?---It appears to be.

Does that look like an AR15 to you?---No, it doesn't.

What sort of gun is that?---It looks like a shotgun.

A shotgun, okay. A shotgun that can shoot lethal rounds?---I don't know.

Well, is it a beanbag shotgun?---I don't know.

The website on which we got that picture suggested that that was in the wake of the shooting. Are you in any position to verify whether (a) that the TRG were carrying longarms in the community whilst you were there?---I have no idea where that photo has come from that's not a - that's not a police officer, there's a badge on the arm there that would suggest that that might be - that indicates that's either an Aboriginal community police officer or auxiliary, which again means that I don't know whether that's a real photo or not.

I have to accept that. We just - - ?---It doesn't appear to be a real - it looks - it may be doctored.

It may be an incident of false reporting, I don't know?---I would suggest so because that doesn't - - -

Can I just move to my last topic? I just wanted to take you to the deemed text exchanges which is before the court but none of which are the kind that you have been taken to by Dr Dwyer. These are not about race, okay. The first one is, it's in brief numbered 3-161 at page 6399.

Bec, do you have that first one? I don't want you to put it up, I am just letting the other parties know of it.

I have been told not to read it out so it's identified people, so I will take you through what is in the text and ask you for a comment, okay.

THE ORDERLY: Could I have that reference again please?

MR BOE: Page 6399.

DR DWYER: Of what?

MR BOE: Brief numbered 3-161. I can actually give you my copy, Dr Dwyer.

DR DWYER: No, I'm fine, thank you.

MR BOE: Now, this is an exchange between two police officers, one of whom is Constable Rolfe - to give you context, and it occurs around 3 September 2019. The other officer texts him and says, "Sorry about the stress caused by losing my shit the other night - stress you didn't need. You sorted it well, I'd just had enough. He was the second person to press my button that night." In response Constable Rolfe wrote back, "Bro, there was literally no stress about it. I'm all for that shit. I'd done the same thing to you more than once before." This was the part I wanted you to listen carefully to, "I'm always ready to make my camera face the other way and be a dramatic cunt for the film ha ha". Now, and response from the other officer was, "An Oscar goes to". What do you make of what Constable Rolfe is saying that he has done or he is always ready to do?---I'm aware of that particular text messaging and it's a reference to turning something that is recording away from whatever it is supposed to be recording.

That is to attempt to either officially record something that was made up or not record something that should have been captured in terms of the interaction. Is that fair? ---That's not how - I read it as though turning away - if something is recording and you're turning away from it.

And then "being dramatic out of camera" to give the impression on the recording that something other than that which was actually happening was happening?---Yes, no, I understand what you mean. Potentially, yes.

To make something up about something they'll do as a police officer?---Potentially, yes.

The next one - because they're all in the same line. They're not about race, they're all about what might be prevalent in the surface, do you understand? The next one is at brief 3-161 page 6406 and I will read it to you. The other officer, which happens to be the same officer as we were talking of before says, quote, "Well, fuck me, I'm having to answer more questions about an incident over a year ago. Some turd claimed I knocked him off his pushbike with 301". Now "301" is a reference to a baton isn't it?---I'm not sure.

"And then roughed him up." Only person to get roughed up was me as I got dragged on my face as he was trying to run away. All seems well but they now have a hard on over the fact I used 301 to try and block him in. They're now asking a fourth lot of questions. I think they pick someone up and then just pick on them, finding my breaking point maybe." Now, before I keep going, have you read this?---No.

Okay. The next - the response from Constable Rolfe was:

"Over a year ago?? Fuck they're gay cunts" and this is the important part, unfortunately the important part, "Yeah, they just find a name and go for, you know, a -over and over. Fuck 'em, just let them waste time and then if they ever have enough evidence just stress leave until they let it go. Seems what everyone else does."

Now, can I summarise what I understand that to be is that to tell him not to get too distressed about any investigation and give him a tactic to avoid being held to account - - -

MR EDWARDSON(?): Your Honour, I object to this. This is really a matter for submissions. If Mr Boe is going to interpret these messages. I don't see (inaudible) in that (inaudible) messages to and ask him on that score whether he has any (inaudible) on the appropriateness of those messages but to really stand up and draw inferences from the Bar table as to the meaning of those messages and then juxtapose that into the line of questioning is really not going to achieve anything.

THE CORONER: I'm not sure that the officer's opinion, as to what is contained in the messages, is necessarily helpful, unless it's terminology that's rife, and known within the, you know, police force. However, the second aspect – if you're putting a proposition to him - - -

MR BOE: Not yet - - -

THE CORONER: - - - that there is - - -

MR BOE: - - - people are jumping the gun, your Honour, I'm not going to be doing what is being complained about. If you let me, I'll just finish it and – and there won't be – I'm not putting my take on this communication.

THE CORONER: You can. You can put your take, and ask if that phenomenon of people going on stress leave, and delaying matters, so that they go away, is something that this officer is aware of.

MR BOE: That's exactly what I was going to ask.

THE CORONER: Then I'm happy for you - - -

MR BOE: Thank you, your Honour.

THE CORONER: - - - to put that question, rather than asking for an opinion about what is contained in the text messages.

MR BOE: All right, thank you, your Honour. I won't do that.

The – the line in that text that I wanted to ask you about, he says "Seems what everyone else does", right. Does that concern you, that he at least had the belief, that this is a thing that a lot of people do in the police force, when they're faced with an examination of their conduct?---So the first thing I'd like to say, your Honour, is a reference was made in the lead up to that question, about it indicating it was widespread in the police force. I'd suggest that is not the case. I'd suggest that is a very isolated type of communication. And in answer to the question, that it's not widespread. So there are lots and lots of people in the police force who have been investigated for matters, and it has occurred, and it does occur, that people do take

some personal leave. But it's not widespread in my view, and it may be very much isolated to an individual, as opposed for something that's more broader in the agency.

I just want to be nuance with one final question on that text. I wasn't suggesting that that was evidence, and it was widespread. I was asking you is it concerning that he may have viewed it as widespread?---Your language leading up to that indicated that it was widespread, that was what you were alluding to. I just wanted to clarify that point. Sorry, your question?

When he says "Seems what everyone else does", suggests that the writer of that text held a belief that it was something that was widespread - - - ?---It seems.

- - - does that - - - ?---Seems. He seems to think that. That doesn't mean its widespread.

Yes, the last text exchange, and my last question is, your Honour, is at brief 3161 at page 7280(?).

There's a communication with a person who appears to be a paramedic, not naming them, appears to be paramedic. She has a communication with him, to which he responds, "You didn't have power all night, ya that's – that's shit. Yeah you guys don't know it's so early, who will you be working with tonight?" And this is the line, "I've had some busy shifts lately, mashed some dudes face against a wall, and that talkative name paramedic came and 'quickly got on board that we were treating him extra nice so he didn't make a complaint'". Did you hear that? What I've just read?---I heard it.

The suggestion in there, to this other paramedic, is that another paramedic had got on board to diminish the seriousness of what he had done, so that the person wouldn't complain. Did you get that from that?---That's what it appears to allude to, yes.

Does that concern you that that sort of collaboration is believed to have been given by – well Rolfe say, thinking that there was some degree of collaboration on a person, to avoid a proper scrutiny of what he had done?---Without knowing the context and – and the left and right of that, yes.

Thank you, your Honour, I have no further questions.

DR DWYER: Your Honour, just less there be no confusion – or any confusion. The 301 I'm told is a call sign of a car, rather than a weapon.

MR BOE: Sorry (inaudible)?

DR DWYER: A 301, it's a call sign.

MR BOE: Well can I just say, I'd – with respect, I'd like to hear evidence on that, because our enquiries - - -

THE CORONER: I suspect that there will be some evidence - - -

MR BOE: - - - well what I was going to suggest is that there's some evidence that 301 is a reference to the use of a baton, a police baton.

THE CORONER: All right, it's something we'll try and clarify Mr Boe.

Yes, Ms Morreau.

MS MORREAU: Thank you, your Honour.

XXN BY MS MORREAU:

MS MORREAU: Assistant Commissioner, my name's Paula Morreau. I act for the Brown family. So another of the families of Kumanjayi Walker. I'm going to be focussing on the events on the evening, to start with. So when I'm asking questions, it really is about the series of decisions that – that you made, and were a party to, from the time of the shooting onwards. Now, as I understand your evidence, your information about what the community was doing outside of the police station came from three sources. Two phone calls with Senior Constable Hand, that were very early on. One or more calls with Superintendent Nobbs, and a short call with Derek Williams. Is that right?---Yes.

And particularly focussing on the information you received from Senior Constable Hand and Superintendent Nobbs. That information was necessarily incomplete, because the information was coming from inside the police station. That's right, isn't it?---Yes.

Yes. So there wasn't a full vision on what was occurring outside?---I don't – look, I can't actually speak for the way in which they – made their determinations.

Okay. Can I ask you if you recall the detail of the information you got about the possibility of arms being held by the community, what information that was?---That they were armed. It wasn't really any more detail than that.

So no basis of how that was observed?---No.

Or armed with any – or what that was?---Not specifically, no.

Or at what point in the night that was?---Well that was spelt out in my – my evidence, at what points in time I was - - -

That you were told?---Provided that information.

Okay, so we just refer to the timing of the information - - - ?---Yes.

- - - where you've noted that down. But it really was that sparse, if we can describe it that way?---That what, sorry?

Sparse, just that they were armed?---Yes.

And what about the figure of 200? It doesn't appear in your notes until there's a meeting with other – other people present. Do you know how you came to the number of up to 200 people outside?---Not specifically. It would have been part of the information that was shared through one of the briefings that occur as the night went on.

I see, that's okay. The – Senior Constable Hand gave evidence that when he spoke with you, that you mentioned to him that you, at that point, believed there was going to be significant tensions in the community, and you were concerned for their safety. That's an accurate recollection of the conversation with you? One of the two conversations with you, would you agree?---With Hand?

Yes?---Hand said to me that he'd never been so scared in his life.

Yes?---They were his words.

I'm just asking you about your reflection back to him. Did you express to him your concerns for their safety?---Oh I don't recall.

Okay, but you would accept that his memory would be a reliable one?---Constable – Senior Constable Hand's?

Yes?---There's no reason to think otherwise.

And it's consistent with your statement in fact.

If the officer can be taken to page seven of exhibit 7-145.

Officer, I understand that you may have the facility of an I-Pad that would make it easier for you to traverse to where I'm going to ask you questions about.

Page seven of the statement.

THE ORDERLY: Do you need it on the screen?

MS MORREAU: No.

You've got that page of your statement, okay?---Not yet.

It's par 35 of that statement. If you can just familiarise yourself with the contents of that page. You can see that you're describing there the time in between the two phone calls with Officer Hand and at par 35, you indicate your concerns about the

wellbeing of staff within the police station arising at around that time?---Yes.

Yes. Now, you then have a short conversation, you've put in your handwritten notes, with Derek Williams. Do you recall how long that conversation was?---It was very short.

Yes. And the point you told us earlier was to see how he was going, but also to gauge what was occurring outside of the station, wasn't it?---Yes, it was.

And you asked him, did you, whether you should be worried about any harm to police?---Yes.

And did he then agree with you that that was a possibility?---As my notes say, he indicated that he was concerned that police might get hurt.

Yes, but do you recall whether he was agreeing with your question that it was a possibility or whether that was something that he offered himself?---No, he offered that information.

Did he also tell you that the Elders would work together to sort it out in that conversation?---I don't recall that.

I see. Did you, at that time, know that he was an uncle to Kumanjayi?---No, I didn't.

I see. Now, you've mentioned your past experiences and why you formed the belief that I've just taken you to. And as I understand it, that comes from your time as an officer in Yuendumu and Papunya and also whilst you were the OIC in the southern division?---Yes.

Those experiences that you described with – under questions from Dr Dwyer?---Yes.

And those experiences, as I understand it, were not – did not involve violence against police?---Not always.

No – well, not at all. The riots and the community unrest that you were describing was intracommunity violence, wasn't it?---That was the evidence in relation to that aspect. But there was also violence towards police.

Do you mean that was incidental to the police interventions in relation to that violence?---No, at other occasions where we were subjected to violence by the community.

I see, I see. But your evidence, I think right towards the end of your evidence in answer to questions from Dr Dwyer was that you had not experienced a situation like this before. That's correct, isn't it?---No, I've never had to deal with an operational response to a police shooting in a remote community, no.

That's right. Did you have any protocols or research that was available to you as a



police officer that would assist you to negotiate the response with the community to such an event?---Not – certainly not available to me at that point in time.

No. Are you aware of any since?---Look, I'm aware that we've had police shootings on remote communities in the Northern Territory in the past.

Yes?---But there isn't a document, as such, that if that's the type of information you're sort of referring.

Yes, any - - -?---So, no.

Any guidance for someone in your position making decisions about response to the community in relation to such an event as this?---I wasn't part of the two scenarios that I'm thinking of that have impacted on the Northern Territory Police over time. But I am sure both of those went through Coronial inquests and any recommendations from those inquests would have been incorporated into the policy that exists currently for the Northern Territory Police - - -

Okay?--- - - - as it relates to those two remote community police shootings that I'm aware of.

Okay. Did you have regard to them at the time of these events on 9 November 2019?---Not specifically. And I'm saying, if there was recommendations that came from those particular inquests that were relevant to our policy, our policy would have been – they would have been considered with any review that was conducted of those policies.

Were there any things in particular from those inquests that you recall were of use in this one?---I don't recall the actual content of those two particular matters.

Okay, thank you. On the basis of the information that you were provided in relation to the community's activities outside of the police station that we've gone through, and of course, your past experiences that we've also just spoken to, you developed the concern that there was the risk of violence either towards the police station or towards the police members. Correct?---Correct.

And this concern of yours really underlay the decision-making, I think you've described, about the response to the community throughout. You would agree with that?---Yes.

And that in particular is most acute in relation to the decision not to tell anyone that Kumanjayi had passed?---Yes.

Now, you accepted, of course, that your fears about that did not eventuate here?---Yeah, I did give that evidence, but also the callous reality of the decision-making may have been a contributing factor to the fact that that didn't occur.

I see that's a bit speculative though. We don't know?---As is your question.

Well, my question was really – your acceptance that in fact the fears were not made out, they didn't eventuate, did they?---No, I gave that evidence. But again, as I say, that we're talking about foresight or hindsight; decisions were made and those decisions were executed, albeit at points in time, not particularly well and no harm written submissions caused further to the community from a physical harm point of view or property point of view and that, in that context, has been maintained. So, I have to take some ownership of that decision and some of that as an outcome, acknowledging the callous reality around the decisions that were made at that time and the impact they had on the community and from a cultural sorry sense and the impact that's had on them then and obviously, continues to have on them now.

Well, significant psychological harm. Correct?---Well aware.

Sorry?---I'm well aware.

Yes, so that was the impact. Now, have you been made aware subsequently of some videos that were published by a member of the community live, via Facebook streaming outside of the police station on the night?---I'm aware there's video that exists. I've never seen it.

You haven't seen it?---No, I haven't.

All right. Now, as I understand your evidence earlier, you indicated that you did not actually consider at the time, because of other operational priorities, you did not actually consider inviting family, either by phone or in person, into the police station before Kumanjayi Walker passed. Is that right?---That's correct.

And we – at the time on the 9th, you had personal relationships with some Elders in the Yuendumu Community. Correct?---I did have and still do.

Yes. Mr Simms in particular, but also Eddy Robertson. Correct?---So, less – so I know both of those gentlemen from my time at Yuendumu, but they're not two of the people that I have closer relationships with.

I see. Who were the ones that you knew at the time on the 9th of November?---Well, I knew them all, but I had different relationships with lots of them.

So, Kumanjayi Nelson is someone that you - - ?---Yes.

- - - were aware of. Any other names, other than Mr Simms and Kumanjayi Nelson?--Do you want me to name all the people that I knew?

No, the closest Elders that you would contact in an event such as this?---Well again, I hadn't been exposed to an event such as this, but the people that I would communicate with if I was ever in community, I had seen Eddy Robertson, as you've indicated, Warren Williams, Robin Granites, who I see outside, Kumanjayi Nelson, Francis Kelly and Langdon, I can't think of his first name now, Jimmy Langdon.

Thank you?---I heard his name. And look there are others, and Otto Simms is another gentlemen that I did know, but – and as it turns out, some of the Walker family members that I spoke of earlier in my evidence, I've actually had a bit to do with. Wilson Walker is one of those people who was close to Kumanjaya Nelson as well.

Thank you?---And Ned Hargraves.

Now, you were taken by Dr Dwyer to a note that reflected the names of Mr Simms and another man, as well as identification of the grandfather of Kumanjaya Walker. You remember that moment?---Yes.

Was that the first time you gave consideration to contacting any elders in the community yourself?---Look, I don't recall.

You'd agree, wouldn't you, that - - -?---Sorry, no, because I'd already contacted Derek Williams who I considered to be a leader or an Elder within the community.

I see. Did you consider though, contacting someone - some other Elders in the community at any point prior to sort of considering notification of the death?---I don't recall what my thought processes were at the time in that regard.

It is a measure that you would have available to you when confronted with a community concern, to make that proactive contact to those elders that you knew? ---Potentially, if it was appropriate, based on the circumstances.

Yes. Well, what made it in appropriate in this case?---Because of the way in which this was - was occurring moment by moment, I will be honest, some of - we were dealing very much with the operational. A decision had been made that Eddie Robertson was going to be the point in contact. I didn't know who - what the relationship with any of these other people may have been, other than knowing through the information that I had been provided, that Eddy was a point in contact. The appropriateness of talking to anyone else - I don't know where that would have necessarily taken me at that point in time and unfortunately, I can't recall the exact time that Kumanjaya passed, so - - -

It was around 8:39 pm and I think you were told at about 8:49 pm after you spoke with Derek Williams?---So there was an hour of activity and in that hour a lot was happening operationally and I did not have a capacity to turn my mind to the opportunity to ring an Elder at that point in time. I didn't turn my mind to it - at that point.

I see. You gave some evidence that you were concerned that some Elders might react emotionally to the news you were talking about the news of the passing, is that right?---Correct.

You're not suggesting they would necessarily be violent of course?---I didn't know. That was my concern because I have seen people who are in that Elder group that I just spoke of who have behaved in a manner that wasn't in keeping with their status or standing in the community. I am not going to say their names in court.

No?---But that is the evidence - the information that I had from my personal experience that I utilised to make that very very difficult decision at that point in time.

I want to turn to the records of the decision not to advise the family of the death and, your Honour, I note I am coming close to 20 minutes. I expect that I will be another 15 minutes if I may. These are really important issues for my clients and (inaudible) not be in this position very long.

THE CORONER: Stop talking to me. We will keep going with the questions. We have got a number of other people who need to ask questions and we have limited time.

MS MORREAU: I appreciate that and I will be as quick as I can.

Assistant Commissioner, in your statement, which I think you have before you, at about - at par 49 we are talking about this time just after Kumanjaya has passed, you can see in the lead up to that paragraph there?---Yes.

And if you can then also flick over to page 30 of that exhibit, on the iPad in front of you, this comes to your handwritten notes, which is an attachment to that and there's a handwritten note entry at 8:54 pm or 2054 pm. Have you been able to turn that handwritten note up yet?---Sorry?

Have you got the handwritten note, 20:54 pm?---Yes, I do.

"Critical decision made, recorded by beer" and then you've noted that you've been told that Kumanjaya has passed - yes?---Yes.

Now, I am just trying to enquire whether that critical decision a 8:54 pm is the same that I took you to in par 49 which is then the decision that the family would not be advised of the passing of Kumanjaya?---I would suggest so, yes.

Thank you. And then if you can move on further to page 46 of the document in front of you and this is the handwritten notes, I understand it, of Assistant Commissioner Beer, would that be right? TW005 in that exhibit? Have you got that on the screen? It starts off at the top of the page 22:00 hours?---Yes.

And are these the notes of Assistant Commissioner Beer?---Yes, I believe so, yes.

And this relates to, as I understand it, the INT meeting that was held, which is the - obviously the command meeting at 10 pm. Is that right?---I believe so, yes.

Can I just take your attention to about the bottom third of that handwritten page. You will see there's notes but really the relevant passage starts, "Derek" and then you can see "T Elders" do you see that passage there?---Yes.

And then underneath it's got, "Up to 200 people, currently 20". Now, you will note that Superintendent Nobbs was attending by phone in this meeting, from other record. Was this information that was being provided by him?---I don't recall.

Okay, you don't recall being - hearing information of up to 200 people, currently 20"?---I was clearly part of the meeting but I don't specifically recall.

Do you recall hearing that the numbers might have reduced at the station at around this time?---Not necessarily.

You see further on, "No overt acts of violence - rocks, community calm"?---Yes.

Again, do you recall those matters being described to the group from Superintendent Nobbs in this meeting?---Look, not necessarily, but that's not to suggest it wasn't part of the meeting.

Can I ask you to turn two more pages - electronic pages, to what are the typewritten notes of that meeting, as I understand it. Can you see that there?---Yes.

And you told us in your statement and in your interview that you understood that to be consistent with the handwritten notes but can I take you to something that I suggest is inconsistent but - well, I've just taken you to. Do you see down in the dot points, "Critical decisions" number 4. "Due to up to 200 community members armed, congregating outside the police station, the decision has been made to not confirm the deceased". See that there?---Yes.

Now that's inconsistent with the handwritten notes that I just took you to, isn't it?---It appears to be, yes.

Yes. Nevertheless, at 10 pm it's recorded that the decision was made not to tell the community about the passing of Kumanjayi Walker?---It was recorded then but the decision was made earlier than that.

Yes, at the - around the 7.54 pm mark, is that right - I'm sorry - 8.54 pm mark?  
---Correct.

And there you see in that par 4, you will wait until TRG is once on the ground before progressing that, that's - before making the decision to notify "media" it says there but I think you have indicated that the decision was not to notify the community until the TRG had arrived on the ground. Is that right?---Yes, I'm not sure what you are referring but that's - that's correct. That's my recollection.

THE CORONER: Just on that point, if you go back to your notes at 2206, halfway down, "20 out front station, up to 200"?---Yes.

I'll just read that. Keep going.

MS MORREAU Thank you. That makes it complete, thank you, I appreciate that. Now, I wanted to take you now to - back to your statement again, which is at page 14 of that electronic document that you've got in front of you, pars 68 to 70. Have you got that there sir?---Yes.

Now you'll see that at par 70, at least by midnight, you have recorded that it was understood that most people had moved away from the station and moved back into the community, correct?---Yes.

And I think we can see from Officer McCormack's notes that it was reflected that things appeared calm outside of the police station. Do you recall that sort of conversation occurring at this midnight briefing?---Who's Officer McCormack?

He's ascribed for Superintendent Nobbs, I don't suggested that he was present with you.

It's exhibit 5-03 for my friends.

But the essence of par 70, as you're expressing it, is that by midnight at least, things were calm outside the station. There was no one there?---At that point in time, yes.

Yes. Now I want to ask you, was there any reconsideration of the decision not to notify the family, or the Elders, of Kumanjayi's passing, once things were calm, at midnight?---Although things were calm at midnight, that doesn't mean things couldn't have changed very quickly. So the direct answer to your question is no.

You would wait for TRG to arrive?---Correct.

Now you already had Forward Commander Zang with an extra three officers who had already arrived. Did you not consider that was sufficient deterrence in the community, to advise the family at that point?---No, they weren't in the community, they were in the police station.

Yes, in – but they were within – they were – they had arrived at Yuendumu?---They were in Yuendumu, yes.

But you didn't consider that that provided sufficient force, in order for you to be – to consider notifying either the Elders that you know, or particularly the family?---I don't accept the term force. They were simply replacing those officers who were at the station who were fatigued. Replicating like for like, so to speak. And the idea of TRG coming into the community was to make sure, that not just the members, but the police assets were protected, if where was information provided into the community and there was an adverse reaction to that action, then the police weren't

prepared for that eventuation may have been. Even though the presence of people outside the police station had changed.

Were you aware of the decision, or the act of Forward Commander Zang misleading Eddy Robertson about Kumanjayi's state, just after midnight?---Look, no it wasn't until I went through some of the evidence yesterday.

I see you – no one told you of that on the night?---No.

It should not have occurred, should it?---Look no, I'm – I'm – the way in which the – that transpired, there may have been decision – reasons for the decision and the – at that point in time, but it certainly wasn't part of the plan that was formulated.

Well misleading is additional to not telling, isn't it?---Yes.

Now finally, very briefly, you then spent many days in the community, from the Sunday, late morning I think?---Yes I did.

And you were really consulting the Elders that you've mentioned, that you've had relationships with?---I spent a lot of time with them, yes.

Yes, establishing cultural protocols of healing?---Endeavouring to start that process, yes.

Yes, and attempting to rebuild trust between the police and the community?---As a starting point. And that was what led me to assist in the community in – in arranging for the ceremony to occur at the police station that happened on the Wednesday.

Because you had perceived that there was a significant level of distrust, by members of the community and the police force?---At that point in time, the community had just been through a scenario where a police officer was responsible for the shooting death of one of their community members. So they were still grappling with the gravity of that situation. So to suggest anything other, as you've just described, it's probably hard for me to say. But there was clearly a lot of sadness and hurt in the community. And my role there was to start that process. That's a process that had to be started at that point in time. And I was the person that commenced that on behalf of our agency. And that needs to – that's what need to be ongoing.

But in your meetings with these Elders, and they're – you had several of them, and you helpfully set some of the feedback you've received into an email, that you then passed on to other members of the Northern Territory Police Force. But in those meetings, the expressions to you were not just grief and despair at the – the loss of their loved one, was it? It wasn't just grief and despair that were being expressed to you?---No, no, there was anger and sadness.

Yes. Were there questions being asked about matters that the community perceived that they had been either deceived or not – or kept in the dark on?---Yes.

Yes, in particular, why the ambulance moved, if it wasn't carrying Kumanjayi to medical help, for instance, yes?---Yes.

And you know, why the decision was made when there was no medical clinic operational in the community. These were the questions you were being asked?---Yes they were.

And they were pertinent, obviously, questions?---To the community, yes.

Yes, but revealed that they – and there was concern about the lack of information that had come back to the community about Kumanjayi's state?---Yes I suppose so, yes.

Now, in recording all these questions, and taking these questions from the Elders, did you attempt to give them any answers at that point, or were you reinforcing that this would be the subject of future investigations, including like these in front of her Honour?---It was probably the latter. I mean I certainly couldn't answer most of the questions, myself. And I did not endeavour to do any of that, because by that point in time, there was an investigative process underway that was a Coronial, that then became criminal as well. So I had to be particularly careful in that regard.

Now you mentioned you were invited to attend at the men's meeting and sorrow camp. You mentioned in your statement that the men that you were meeting with, alongside Constable Lanyon Smith, endorsed developing a set of cultural protocols, between police involvement and engagement with Warlpiri people. You recall that occurring?---Yes.

Are you aware whether that process ever eventuated?---So re-reading my statement over this weekend, I'm not entirely sure. And it was a question that I posed to myself, whether that actually occurred. I know that Constable Smith did do some work along that particular concept. I know that I spoke with all of the police officers that were at Yuendumu. Many of whom had come from many and varied places across the Territory, that hadn't been operating on Warlpiri country previously. So I had conversation with them about the appropriate protocols. What they needed to do whilst they were there. But a lot of that was to do with the sensitivities around the police relationship, at that point in time. And what that enduring impact would be.

Can I take you to one hand written note of a meeting that you had on 12 November.

It's exhibit TW006. It's page 53 of that electronic document.

It starts "Community meeting, 14.20 hours, 12.11.2019." That's at the top of that page. Do you see that passage?---Not necessarily.

It should be 57 of the electronic record that you have, not 53, I think I'd given you the wrong number, sorry - - - ?---Okay.

- - - I'm sorry?---So take me to that again, please.



Yes, so you can see “Community meeting, 14.20 hours”, and as I understand from your statement, this preceded a broader community meeting. And you can see there’s a list of attendees, including Kumanjayi Nelson, Derek Williams, James Butcher, Mr Ned Hargraves, Eddy Robertson. Can you see that list of names there?---Yes.

Yes. I just want to take you to – down to where it has “Eddy” on the left-hand side. And then there’s a list of dash points. First is “Minimum police.” Second is “Pistols only.” Third is “Normal uniform.” And fourth is “Listen to”, and I don’t know what the last word is. I was going to ask you what that is?---That’s a good question.

You don’t know?---Look, I’m not entirely sure.

Do you recall what Mr Robertson was telling you and requesting, with those dot points?---So that was a meeting that the community were having with the Commissioner of Police. And that was – they were just sharing their sentiments - - -

Yes?---At that time.

Do – well the question of minimum police, was that a request to reduce police numbers in the community?---I’m not entirely sure.

You can’t recall? “Pistols only”, was that a reference to not having long arms in the community?---Again, that was just each person who was there who wanted to have an opportunity to speak was given the opportunity to speak.

All right?---And I just made some very brief notes.

So, you made brief notes and you don’t now recall what those community Elders were saying?---Not necessarily, other than what was in my notes.

All right. You also met with the Elders on – some months later in March, and I can take you to is, but I have only one quick question about it. In March, you met with Valerie Martin, Francis Kelly, Tommy Watson(?) and two other Warlpiri men and they asked that the police develop an induction package for new staff members. Again, I’m just going to ask you, do you know whether that occurred?---So, I’m aware that it did occur and as I’ve already provided evidence today, there’s – I’ve reviewed that and in my view, it requires some further information in relation to particularly that scenario, the scenario that we’re speaking about from November 2019 and some additional information about the surrounding communities that are included in that current document. But there is a draft induction document.

Will you take that onboard to continue that process?---I’ve already had a conversation with some – my colleagues and yes, we will make sure that’s completed, certainly before this is finished.

All right. Could the draft of that document be circulated to the Coroner and to the

parties in this matter?---I anticipate that Deputy Commissioner Smalpage APM will be providing additional information as a part of his ongoing dispositions that he will provide the Coroner and it will be included in that.

And will you personally be involved in the development of that protocol?---I've already been involved and provided my feedback.

In the future?---I can do.

To ensure it gets to completion, I suppose?---I can do and there will be others who have more contemporary knowledge that I that will also be involved.

My final question, you indicated that when faced with racist statements made by police officers, that it's supervisors or a senior officer's responsibility to manage that individually and the response would be tailored to the seriousness of the circumstances. You remember that part of your answer to Dr Dwyer earlier?---Yes.

Can I ask you, is there any framework or policy that you're aware of within Northern Territory Police that would assist you to determine the appropriate response in those circumstances?---There are a number. You've got the respect, equity and diversity policy and then there's obviously our disciplinary policies that are run that underpin the *Police Administration Act*.

Thank you, Assistant Commissioner.

Thank you, your Honour for the indulgence.

THE CORONER: Mr Boulten.

XXN BY MR BOULTEN:

MR BOULTEN SC: Assistant Commissioner, I'm counsel for NAAJA today. When you spoke with your colleague – sorry, I'll start again. At 1:51 pm - - -?---Yep.

- - - on Saturday when you received a telephone call, there is a – is there a record anywhere of exactly what you were told about what was being required by way of deployment?---Not made by me until I made reference in my notes, as you've seen, and then the development of my statement sometime thereafter.

So, I want to suggest to you that Mr Nobbs has suggested in his evidence that in that conversation, he recommended to you that IRT members be deployed. Do you agree with that?---So, I've already given evidence to suggest that he recommended that members of the IRT would be the people that he would choose, simply because of their readiness to be deployed, but not the IRT specifically.

Here it is also suggested that he recommended to you that the IRT members who were to be deployed take nonlethal munitions, such as beanbag rounds and AR15s to Yuendumu. Was that said to you or not?---Well, an AR15 is a lethal munition, so it

doesn't accord. But I don't recall that being asked of me at all.

So, do you discount entirely any suggestion by Mr Nobbs that he discussed with you that IRT members would take anything more than normal accoutrement?---I don't recall it being discussed at all.

So, you have now twice used language to suggest you're not certain about what you were told?---So, I don't recall.

What can you say about what Nobbs told you about weapons?---I don't recall that conversation taking place, other than to talk about the uniform that was to be worn and extension of the uniform is the basic accoutrements that any police officer would wear.

And you have never read the standard operating procedures for the IRT when you had that conversation?---No, I had not at that time.

But you knew that only someone in the position of a commander and higher like you could approve the deployment of the IRT. You knew that much?---I was aware of that, yes.

How did you know that?---I can't say how I knew that. It was obviously – had been shared with me at some point.

But you understood that you were being asked to approve the deployment of people who happened to be IRT. Is that right?---General duties officers, yes.

Yes. And did you not think that it was important to make a permanent record of what you had decided and what you had directed?---In hindsight, yes. But the decision wasn't one that was an out of the ordinary decision, it was a conversation about the deploying general duties officers, in my view. It wasn't one that was relevant to the IRT or the IRT policy.

You had been instrumental in developing the contain and control – what do you call it, contain and – cordon and contain group that turned into the IRT. Is that right?---I was involved in its reinvigoration, yes.

And you were aware of the officer who was primary responsible in Alice Springs for that group as it came to be known as the IRT, right?---The commander?

If it's the commander. I'm talking about Sergeant Bauwens. Are you aware of him?---I'm aware of him, yes.

And you gave him particular responsibility to develop the protocol, is that right, the training mechanisms?---From memory, yes, I think it was Sergeant Bauwens. There could have been others involved. I know that Sergeant Mike Williams was particularly instrumental as well in development of the training and then the policy that went with that training.

So, did you maintain lines of communication with Mr Bauwens over the years since the IRT was established?---Not really, no.

So, going to the conversation on that afternoon with Mr Nobbs at about 1:51 pm, you understood that part of his concern was the evacuation or potential evacuation of health staff?---Yes.

You had never experienced such an evacuation, it seems. Is that right?---Well, as I said in my evidence, that I've been exposed to it previously, but we managed to allay the concerns of the health staff at that point in time and evacuation didn't occur.

Now, I understand from your evidence that in the past when there was a threat by health staff to walk out of a community, it had been discussed and their concerns met before they left?---The health concerns?

Yes?---In the scenario that I have in mind, yes.

Have you ever had experience of, as it were, a walk out by health staff that had not been the subject of, discuss this and let's try and work this out, between the police and the health staff?---I'm not sure I understand your question.

That's been your experience in the way that problem was dealt with in the past?---Yes.

Let's talk it out?---Communicate.

Yes. So, on this particular afternoon when you said whatever it was that you said to Mr Nobbs about his concerns about what was happening in Yuendumu and the health staff in particular, did you pick up the phone to talk to anybody at health?---I did not, but I - - -

Did you direct anybody to do that?---I have a recollection that Superintendent Nobbs had done so, or someone had done so already. But I certainly did not.

Well, Mr Nobbs was in where, Alice Springs?---I assume so.

So did you understand that there'd been on the ground discussion in the community in Yuendumu between the police on the one hand and the health staff on the other?--Now I – I now know that there were conversations between police on the ground and the police – sorry, the health clinic and I understand there was also conversations at a middle management level as well, but I wasn't privy to all of that information then.

Mr Wurst, whatever it was that can be said to Mr Nobbs about police, extra police going in some of whom were going to be from the IRT, was that the only strategy that you had about how to deal with the issue at hand at that time?---What was the issue?

The problem with police resourcing, with the need to provide respite to police who were on the ground, the particular acute issues that were arising as a result of the walkout or threatened walkout by health staff and the property offences that had been committed that were apparently directed at the health staff property. Those are the things that I referenced?---So community safety underpins every community and part of that decision was to provide additional policing resources into provide that respite but also to provide that broader community reassurance and community safety aspect. So at that point in time, yes.

So how did the deployment of a police dog and its handler factor into those considerations?---So that particular asset can conduct roving patrols, no different to any other police officer and provide additional footprint and presence in the community and that's what I understand that particular asset was going to do through that deployment.

So Mr Wurst when later that night you're at the bore and you got the terrible communications that you did and you learnt what had had happened, from that point on right through the night, right through the early hours of the next morning it would seem that you made a deliberate decision, a difficult one, that there needed to be tight control over information concerning Kumanjayi's death?---Unfortunately, yes.

And as you've described it, the callous reality of your decision making was that there was not one single person, not one single Walpiri person that you could trust with that information until much later in the evening. Is that a fair way to summarise your decision-making process?---Yes, without adding all the context to it but yes.

I understand the context. But the bottom line is that there is however many people were living in Yuendumu, there wasn't a single person there that you could trust with the information, is that right?---It wasn't so much the trust with the information of the individual, it was the information that was shared beyond that individual and the impact that would have. So it wasn't about the individuals necessarily but it was about the way in which that information and the impact it would have on the community.

So one person risked the whole group becoming an uncontrollable risk. Is that your evidence?---My evidence is that I did not know how to ameliorate that risk if the community reacted in a negative and hostile way towards police and I couldn't – I couldn't bring myself to a position where I could do that in any safe way until certain things had been done, as I provide in my evidence.

And as I understand your evidence, you stand by everything you said and did?---I stand by it but acknowledge that the hurt and harm that that decision has caused the community.

And you still think irrespective of the hurt and the harm, including psychological harm and the lack of trust that's developed between the community Walpiri and your colleagues, you called it right?---Yes.

And have you had significant support from your police colleagues in the way in which you made these decisions since it happened?---I'm not sure I understand your question.

Has anyone criticised you?---Of course.

Has anyone caused you to answer in some official capacity for the decisions that you made in that period between 7:30 in the evening and say 3 o'clock in the morning?---I'm doing that now.

So this is the process, is it?---It's the most appropriate process, yes.

Okay. So what about in police circles, has anyone said we want you to explain yourself, why did you do this?---Well the appropriate way of dealing with this is to do this process first. If the police senior executive wish to go through that process with me, that's a matter for them.

Has anyone supported you and said you called it right?---I've had conversations with people who have suggested that it was a tough decision but ultimately in their mind they may have thought it was a correct decision.

How many – if you had to give us a rough estimate - - -

THE CORONER: Where is this going, Mr Boulten?

MR BOULTEN: I'll withdraw the question. I won't waste time trying to justify it, your Honour.

So you've been asked to comment on a number of text messages from one phone, from one police officer. Not only did those text messages relay racist sentiment, sexist sentiment, anti-gay sentiment, but they also made comments about use of force and the differences in policing between the IRT members, perhaps on the one hand, and bush courts on the other. And you know what I'm referring to in the message that was drawn to your attention?---Yes.

So do you understand that there is an approach or an attitude in the Northern Territory Police that there is a different way to police in Aboriginal communities compared to Alice Springs, Darwin, Palmerston?---So if you're working in a remote community, yes, policing is different, because you're in a remote community. The environment is different, the context is different, so it is policing differently, yes.

So would you accept that many of the skills that inform policing in communities should also underpin policing in urban centres?---The training and skill required doesn't change regardless of where you are, it's the way in which it's applied.

Are you aware that looking down the nose of the police who work in Aboriginal communities by other officers in urban centres?---Only by the text message that

I was just made aware of.

And you're not aware of any other police officer at any time saying or acting as though they support a difference?---So remote policing is the heart of what it is to be a Northern Territory Police Officer. It's esteemed. I actually know the opposite, that people who have done lots of remote policing are held in very high regard, not the way in which that text message portrayed remote police.

So the Northern Territory has special challenges for police, doesn't it, because of geography and because of the difficulties that are posed to police on the ground with Aboriginals, correct?---I wouldn't call them special, I would call them unique and that's the Territory context and environment within which we operate.

So what do you think should be done to ensure that there is no system in place that allows for racist attitudes to dictate police techniques?---So I'll provide a piece of evidence that is my own personal experience. So I have taken upon myself to approach the recruit coordinators within the police college and I spend an hour or two with every recruit course to speak to them about my experiences in the Northern Territory as a police officer in remote communities, the joys and benefits you get from that and the ability for you to become the best police officer you can be through that particular experience and exposure and then all the way up to where I am, I sit today.

What else?---What else?

What else (inaudible)?---It's meeting variants - everybody has a role and function to play in relation to the culture of this agency and our agency from this particular experience I would suggest that racism - to call it that - is not widespread, it is very sporadic and in very small pockets and it is not endemic across the agency and it is not widespread whatsoever. We, however, need to be aware of it - mindful of it, call it out when we see it, deal with it, make sure a strong culture that we have and we continue to develop and grow is maintained so that we are there to support the Territory Community no matter where you work, in the remotest of communities or in the middle of an urban setting.

How many times have you seen someone brought to book for racism?  
---I couldn't tell you.

Well tell us - do best estimate?---I've got no idea. I don't work - - -

Well, have you seen any - - - ?---Yes, it's happened but I don't work in the Professional Standards Command so I'm not someone who's exposed to it.

(Inaudible) roughly?---I've got no idea. There's been some - a few. I couldn't tell you a number.

A few?---I don't - - -

MR EDWARDSON: Your Honour, I object to these questions. You are going to receive evidence from the person who is in a position to give you informed evidence about it. He is the right person to ask these questions of.

THE CORONER: So from this officer he's aware of a few.

MR BOULTEN: A few.

THE CORONER: I don't know whether you want to ask him anything further about how he became aware of them or how that is communicated throughout the police.

MR BOULTEN: That's all right. No. Yes, thank you, your Honour. How do you find out about this?---I can ask.

THE CORONER: I mean we are talking about a culture though?---Mm mm.

If police - if there are some police who have been dealt with in relation to racism, is that something that is then communicated - not the individuals involved but the fact that there has been an issue, is that communicated to the police force more broadly to reinforce how inappropriate and how unacceptable those views are?---And if it was apparent, yes. I am not aware, other than the text messages, of any recent example of racism. I'm aware of particularly specific scenario of racism. Some of the complaints against police may have race as an element. I - the aggrieved may have been an Indigenous person but that doesn't automatically meant that a matter was racist at its heart. That's probably where the challenge, your Honour, comes into this particular space.

MR BOULTEN: Could you give us a rough estimate how many Aboriginal people are police officers in the Northern Territory?---I understand that our - that we have 11.2 percent of our workforce is Indigenous.

The police officers?---That's our entire workforce. I couldn't tell you the exact number of police officers.

So - - -?---We however - - -

(Inaudible) 11 percent approximately and what proportion are serving sworn police officers?---That may be about 160 or 70.

That's the number?---I'm not - look, I'm not entirely sure. I could find out the exact answer for you.

Can you find out?---But what I do know is the Northern Territory Police has the highest ratio of Indigenous employees of any police force in Australia and we are proud of that and we continue to work every day to increase that number through programs such as the Aboriginal liaison officer program, through the Community Resilience and Engagement Command which Karen Elligett(?) is in charge of and that is about placing Indigenous people from Indigenous communities back in their



community, working for police to help bridge the gap between police and community and culture that sits in between and some of those people have transitioned to become Aboriginal community police officers and we have a lot of Aboriginal community police officers of time who will transition to be constables.

Are the pay scales for ACPO's equivalent of serving police officers?---No, it's commensurate to the instrument that they hold. They don't have the same level of authority as a police officer, however our Aboriginal community police officers are also entitled to housing, as all police officers, so they are considered on parity in that regard.

Should pay and conditions for Aboriginal community police officers be the subject of consideration in the police force? Shouldn't you put the pay scale up to attract people to these jobs?---I don't think we have trouble attracting people to be Aboriginal community police officers.

You don't have any trouble?---I don't believe so. I believe we've got Aboriginal community - - -

Have you got enough? Have you got enough?---So the challenge for our agency is are funded to have - we have funding that allows us to have some many particular positions, so many auxiliaries, constables, Aboriginal community police officers, so on and so forth and we recruit to those positions and then when attrition occurs for whatever reason, we will recruit to cover off on those positions. The exact number of vacancies in Aboriginal community police I am not entirely sure but I don't have an understanding of us having significant gaps in that space. I know we've got 37 Aboriginal liaison officers as well so our workforce from an Indigenous employment sense, has never been higher.

But do you think it's adequate?---It can always be higher. I don't say it's adequate but it's something that we work very hard at continuing to grow and build so that our agency is as representative of the community as it can be.

I think I have run out of time. That is all I wish to ask.

THE CORONER: We might take the afternoon adjournment.

Please adjourn.

WITNESS WITHDREW

ADJOURNED

## RESUMED

DR DWYER: Your Honour, just before the assistant commissioner continues, can I confirm that over the break, we were able to have a look at the footage. I'm grateful to the ABC, for Ms McKay(?), for allowing us to have a look at that.

We've then been able to identify the picture that was placed up on the screen while Mr Boe was asking questions. As this assistant commissioner suggested, that person is in fact an ACPO. He has since been promoted to the position as a constable of police and we have a statement and a directed interview from that person in the brief of evidence.

THE CORONER: Thank you.

Yes, who is – yes, Mr McMahan.

MR MCMAHON: Thank you, your Honour.

XXN BY MR MCMAHON:

MR MCMAHON AC SC: Assistant Commissioner, I act for the Parumpurru Committee which is generally Elders and senior people from Yuendumu and most of my questions are going to be directed to some comments that you've made about the dog unit. You may be surprised to know that the brief comments you made about the dog unit are more comments than most people in the whole brief have made about the dog unit. So, I'm going to ask you some questions about that, all right? In your statement – have you got your statement there in front of you?---No, I don't.

All right. In your statement, you say with regard to – this is before the shooting in the afternoon of the 9th. You say that Nobbs told you certain things through the phone call and you list about 10 or 15 things that he told you and I'm sure that you've read those recently, including that the IRT were to be deployed in a general support capacity only?---Mm mm.

Are you looking at your statement now?---I am.

That's 15(k) and (l). And then at 15(l), you say that, "Nobbs wished for a patrol dog handler and his dog to also be deployed if they were available." And the next paragraph, you say that you verbally approved the deployment of four IRT staff and one dog handler. Can you see all that?---Yes.

And so, that all came to pass, although today in your evidence, as I understood it, and correct me if I'm wrong, you said that the question of deployment of the dog handler, which of course means both the dog and the dog handler, wasn't anything to do with the arrest of Kumanjaji Walker?---Not to my knowledge, no.

No. And that's what you've said today. So, there you were on the afternoon of

9 November, you've had this phone call, and I'm not interested in working out why there aren't records and so on, our questions are of a general nature. You've approved the use of a dog handler, so could you just tell us what are your – or at the time, what were your criteria for approving the use of a dog handler at that time?---So, I actually don't believe I was at the level of responsibility required make that decision. It didn't require commander or assistant commissioner approval, in my knowledge. He was going out there in a general support capacity. I'm assuming Superintendent Nobbs just rolled that up into the broader conversation about the staff that he wished to deploy.

Sure. So, I'm just working off your statement where you say, "I verbally approved four IRT staff and one dog handler." So, you have approved it?---Yes.

And you've said that it was not a necessary step in the exercise of command responsibility, but nevertheless, you did approve it?---Yes.

And so my question is, what criteria were you employing? Was it simply someone else said, I want a dog handler and because it wasn't necessary to get your approval, you just gave it?---Yes, so general purpose dogs and their handlers are a resource or an asset that is an additional frontline tool to frontline policing operations. They obviously have the dog that can be utilised at times, but they're – it's just another ability to have a uniform in community at that point in time. We use them in urban, regional and remote settings across the Territory every day. There is nothing unique about it going to Yuendumu and providing support.

So, when you say you use them every day, is that, do you think, relatively precisely, like is that something that's used almost every day of the year?---Absolutely. So, my daily experience in Darwin is that I'm responsible for all frontline service delivery 24/7 in Greater Darwin and we have support every day, day, evening and sometimes at night of a general purpose dog that provides operational support and assistance to the frontline. And those animals and their handlers are not just in Darwin or Alice Springs, there's – I believe there's one – at least one on Groote Eylandt and there is one in Katherine and at times we deploy them to other remote areas as well.

And in Alice Springs. So at least, as I understand it, at least four or five locations permanently?---Yes.

And you'd agree that the use of a police dog where the dog directly applies force to him and them is – comes under the category of police use of force?---I believe it's contained within a use of force policy.

The operational safety and use of force instructions at par 25(1) point 8, it says, "Use of a police dog or horse to directly apply force". And at 25(1) point 9, "Injury caused by the use of a police dog or horse". So to try and contain that to a few simple questions. Generally where the police used force and perhaps injure a person or themselves get injured, it requires a case note entry with regard to the use of force. Correct?---Yes, correct.

Well in fact there are hundreds, if not thousands a year of those case note entries on use of force, aren't there?---When police use force?

Yes?---Not in relation to the use of force that's applied as a result of police dog.

Well that's what I'm putting to you, that the use of – where a police dog is used in the use of force, it's just an example of the police using force and requires a case note entry?---I think I understand the premise of the question and the answer to that is yes.

Well I'm just using your documents, police documents. I don't think it's a mystery. Where it a decision is made to use a dog in circumstances where it bites a person – so that's an example of use of force by an asset, as you call it – what is that on the scale of seriousness with regard to the use of weapons generally? So for instance, a police person could use a baton or taser or a spray or a gun lethally, or a dog to bite somebody. Where does it sit in the scale?---I believe it's considered as a nonlethal use of force option.

Is it considered more or less serious than other nonlethal uses of force? For instance, is it considered to be a more serious use of force than the use of OC spray?---I wouldn't say it's more serious, it's just a different use of force because the person who is the handler is very experienced and trained individual that is trained to manage that particular dog in a particular circumstance and it's not a use of force that's used very often in the community. It's used infrequently I would suggest.

We'll come to that very point later but you know how often it's used?---No, I don't.

So when you say infrequently, that's anecdotal?---Well I review information that occurs every day across the Territory in relation to apprehensions that occur and very infrequently are you seeing the dog used in a capacity where it's actually applied force to an individual who's been apprehended.

We'll come back to that. I'm afraid I don't know Mr Nobbs' rank - - -?---Superintendent.

Superintendent Nobbs, thank you, has made some comments in a statement and a statutory declaration at page 7.

I wonder if that could be brought up on the screen.

Now as I said to you, Assistant Commissioner, I'm not interested in much of the minutiae of what happened on the 9th in differences of opinion, but Superintendent Nobbs is coming tomorrow and he's made some comments about the use of dogs which seem to be different to yours and so I just want to give you a chance to comment on that. I'm just waiting for that to come up on the screen. So he's made a statement. Have you read his statement?---No.

Is there a reason you haven't read his statement? I mean is that – has someone told you you mustn't read his statement?---It's never been provided to me.

You haven't sought it?---No, I haven't.

There's a number of things you haven't looked at today which are kind of relevant to this inquest and it crossed my mind that you have deliberately stayed away from informing yourself about matters of this inquest?---I've not, other than reading my own statement. It wasn't until recently that I knew I was giving evidence and I was provided guidance on what I should use to inform myself. I haven't been following the inquest, simply because I didn't want my views to be tainted by others.

All right. Is that document able to come up?

THE CORONER: I think we're having some technical problems. Can we get it on the iPad?

MR MCMAHON: So just to give you some context for this. Superintendent Nobbs has made his statutory declaration which runs through the form of – it's chronological and it starts, "Well before the date of 9 July", events concerning his role and what he knew about Kumanjayi Walker and so on. And when he gets up to 9 July he's had some conversation – saying July, I mean November, pardon me – and he gets onto 9 November he's had some conversations with Sergeant Frost from Yuendumu where they obviously discussed these events at length. Have you got that there now? If you go to page 7 he's finished a conversation with Sergeant Frost in the middle of the day and then right in the middle of page 7 you'll see, "The following reflected my considerations at the relevant time in relation Frost application to deploy IRT". You see that?---I'm looking at the transcript of his audio interview. Is that the statement?

You're looking at the wrong document. So it's the Nobbs' statement and it's exhibit H to his audio – I'm just going to read it to you because even though I just had injury time I still have to be conscious of the time. He's reflecting on his conversation with Frost and he writes down certain reflections and it seems from what you've said today, this may not have been communicated to you. So have you got that there now, page 7?---Yes, it appears so.

In the middle of the page, "The following reflected my consideration at the relevant time in relation to Frost". All right?---Mm mm.

So he's just spoken to Frost, he's thinking about what she said and he's thinking about what he's going to do. He says the status of Walker and he gives some comments there. But he talks about safety of police. Goes to the bottom of the page, Assistant Commissioner said, "Advice from Frost during our conversation, Walker is known to run and as such the dog unit will be critical in any arrest arrangements". Have you got that? Do you have that?---I'm sure it's here I'm just - -

It's at the bottom of the page?---At page 8 or page 7?

Page 7?---Yes, yes.

"Walker is known to run and as such the dog unit will be critical in any arrest arrangements". Do you see that?---Mm mm.

"Advice that any arrest plan developed at local level will be heavily reliant by letting Walker run and being round up by dog unit". You see all that?---Yes.

So having spoken with Frost, Nobbs makes, when he makes his statement he says well that's what was running through my mind, that's what I was considering, Walker's known to run, the dog unit is critical in any arrest, the plan, such as it may be, heavily reliant on letting Walker run and being round up. So there's a fairly clear message there that Walker is likely to be arrested, it's expected that he will run, a dog unit is critical to assessing that likely development and that we'll round him up with the dog. So firstly based on the evidence you've given today and based on what's not in your statement, it seems that each of those concepts is not something that was in your mind after you'd finished your conversation with Nobbs on 9 November?---No, it was not.

So obviously you haven't approved the dog unit on any of those cases?---No.

And you've already answered other questions about why you approved the dog unit, so we won't go there. One of the expressions there is that "We're heavily relying on letting Walker run and being round up", I assume that means being "rounded up" it's a typographical error. Is being "rounded up" or is "rounding up a person on the run, when you're using a police dog to hunt them down, is that term that's generally used by police for capturing people?---I've never heard it in that context previously.

The dog handler involved in this matter is a man called Donaldson and he has some handwritten notes about this which include that his job was to cut off the escape, track into bush and apprehend with police dog. "Apprehend" is a term of art in policing when talking about dogs which means to latch on and bite, correct?---Not necessarily. The mere presence of a dog - - -

Okay, so (inaudible) - - -?---Well the mere presence of a dog may stop someone from fleeing and they have been - - -

I'm not asking you that, I'm asking you about the word "apprehend"?---Mm mm.

"Apprehend" is a word which has a term of art in this context to mean "bite" are you aware of that?---No I'm not.

Right. Now, just to be clear, having finished your conversation with Nobbs on Saturday 9 November at roughly the middle of the day - whatever time it was - were you aware that Walker - Kumanjaya Walker was likely to be arrested in the subsequent few days?---In the subsequent few days, yes.

As I keep saying, the details don't matter, but you were aware that arrest was on the agenda, that he was going to be arrested?---Part of the intent was for - to allow the police at Yuendumu to develop that plan.

And you knew at the same time, having finished that conversation, that the medical facilities had either shut down or were about to be shut down on that same date?  
---Yes.

And you knew, I suggest, that by approving members of the IRT or the IRT - and there's a disputed fact about that, I don't care what the answer is, but you knew by approving IRT or their members, that they would be deployed there for at least general purposes?---Mm mm.

And they may be involved in the arrest?---For general purposes I didn't have - I didn't turn my mind to the arrest necessarily at that point in time and who was going to execute that.

However, you knew that they may well be involved - if you had turned your mind to it it would be impossible not to reach the conclusion that they may well be involved in the arrest, do you agree with that?---Potentially.

Well, I am not asking about potential, it's just a simple yes or no. If you had turned your mind to the question of whether the IRT were going to be there and that Walker was going to be arrested in the next few days you would have immediately understood that they may be involved in the arrest?---Potentially. I don't know. I wasn't part of that planning.

And the same goes for the use of the dog and the dog unit. If the dog unit is a Yuendumu doing general duties - whatever that might be - and Walker was going to be arrested, it goes without saying really, doesn't it, that the dog may well be used in the arrest of Walker?---It would have been considered as part of the planning I would have thought, yes.

And knowing those matters, nevertheless, did you consider what it might mean for a person who was arrested by the use of a dog whether there would be any injuries that might follow?---Did I?

Yes?---No.

Because you would accept, I am sure, that where a police dog is unleashed to hunt somebody down and round them up or grab them - apprehend them or bite them - whatever language you use, there's a serious risk of injury occurring to the person who is hunted down?---Potentially, depending on the nature of that particular bite, yes.

Yes, well at least it's going to be a bite and it's a question of how serious the injury is, isn't it?---Yes.

So in retrospect would you, in similar circumstances in the future, which is the nature of what we are concerned - what my client's concern is - approve the use of a dog to a community where the medical facilities had been shut down?---Depending on the circumstance.

Well in this case - on this circumstance - or circumstances very similar to this?  
---Yes, I approved it at that knowing - without the knowledge in mind.

Knowing that the person might be hunted down by a dog, might be bitten, might be injured and yet there would be no medical facilities?---So, no.

MR FRECKELTON AO KC: Your Honour because we just went - your Honour, I have held off for quite a while. My learned friend has been decidedly repeatedly using the term "hunted down", presumably that's because of the assertion that from one source that that was terminology used but we ask, given that that hasn't been accepted by the relevant witnesses, more neutral, less sensationist terminology might be employed – like pursued. "Hunted down" is very emotive. It's been done for a particular reason. In our submission it's unhelpful.

THE CORONER: Mr McMahon, do you want to change your terminology?

MR MCMAHON: I am not going to waste time arguing about it, your Honour.

THE CORONER: Okay.

MR MCMAHON: I accept that it's a term which conveys a great deal of meaning and that certainly is intentional because it is a dog chasing a human and biting them and wounding them and I accept all that but I will use a different word from now on. So the point I was just finishing on and I am just giving you a chance to comment on it.

THE CORONER: We had got the question. The question was, "In future would you approve a dog where the clinic was shut down?" You had said, "Yes" and I think you were going to explain?---I was, your Honour. So in this sense, in my mind that particular dog handler and his dog were going to that community to provide additional support to the community to enhance community safety so that the clinic staff could return to the community. I hadn't turned my mind to the other aspect that you were alluding to, but my decision-making and my approach was around that community safety aspect.

MR MCMAHON: Yes, and I fully accept that. If you had turned your mind to the question of the young man being chased by a dog and bitten in circumstances where you also happen to know - usually - that the medical facilities were unavailable, what would your response be to that?---What's the question?

Would you approve the use of a dog in circumstances similar to the ones in this case where you turned your mind to the fact that there may be wounding and that the



medical facility was shut down?---But as I said, the deployment of the dog in my mind wasn't around that.

THE CORONER: This is a different question. This is a different question?---Is it the question of whether I would agree to that if the clinic wasn't opened?

Yes?---It depends. I'd have to give that consideration at the time. Basically every other factor was available to me at that time to make a decision.

MR MCMAHON: You made a statement, which is in front of you, but prior to making a statement you had a long interview with - had a long interview - I think it's called an interview - with Acting Sergeant Welfare. Do you remember that on 5 December 2019?---Yes, I do.

I hope that that might be able to be brought up, at page 45. I am just bringing it up, Assistant Commissioner, because it's a section where you talk about the use of dogs generally and although that's in the interview it doesn't turn up - this issue doesn't simply be explored in your statement in the same way that it is dealt with here, okay? So it's not a memory test, it's just trying to understand what goes through the mind of a decision-maker such as yourself in these circumstances. Do you have that page there, page 45? Now, in the middle of the page it says that you have - you're talking about dog handler and then Wurst - pardon me - you say, "We have that capability within our agency that is new and ever - or emerging, we don't use it very often. We don't deploy it as often as we could or should." Now, do you remember now what you're talking about there, bearing in mind the answer a moment ago that you use dogs every day of the year?---So, the emerging aspect of that is the ability of a dog to track and to be able to track someone who has run away from a particular location. That is what that is a reference to. And in 2019 when the statement was done, it is a capability that we have developed significantly since then and it is used and available every day across the Northern Territory.

But "track" is a bit of a euphemism, isn't it? "Track" also means to grab the person and bite them?---No. No, "track" is exactly as it described, to be able to follow a scent and that scent might lead you to property that has been disposed of in the bush, it can be a whole raft of things.

So, all right. You're talking about tracking in the sense of using smell to find things, people or lost property?---That's - yes.

I see. And when you say, "We don't deploy it as often as we could or should", you're referring to finding people and lost property, are you?

THE CORONER: I don't know if they usually use it for lost property, but they might use it for concealed - - -?---Stolen property.

- - - property or something like that.

MR MCMAHON: A couple of lines down, you say, "I didn't intend using the dog as

such. It was more a contingency". Well, bearing in mind the answers you've just given and what's written above it, what do you mean, "I didn't intend using the dog as such"?---As I said, it was there as a contingency. So, the dog remains in a van of the handler. It is not out and walking the community, so to speak. And it's only utilised as a – as required.

All right. Would you accept that when you use the word "tracking", because we're looking at cases that might be similar to this in the future, as I understand it, when a dog is let off the leash and is tracking and following a person who has run away, that's going to end in circumstances where the dog latches onto the person and bites them until the controller of the dog arrives?---Look, I'm not entirely sure. I would suggest you need to maybe seek evidence from a dog handler themselves.

Well, they're not going to just follow the person as they run off for - - -

THE CORONER: Look, I don't think this officer knows.

MR MCMAHON: All right then, your Honour.

THE CORONER: Because we need to go to a different person to actually get how a dog might be used. I mean, it might well be possible for a dog to follow a scent, alert his handler, his or her handler to a location of interest and be given a command not to go further. I don't know.

MR MCMAHON: Well, that certainly can happen, your Honour. The scenarios I was developing and I'll just make it clear what I was saying and then move on is that, if the dog has to go and detain the person and is far away from the handler, who can't keep up with the fleeing offender and the dog, then there is the scenario of latching on - - -

THE CORONER: Possibly.

MR MCMAHON: - - - until the handler arrives.

You wouldn't dispute that where a person is chased or run after by a dog and apprehended, that when the dog latches onto the person, there can be serious injuries. You wouldn't dispute that, would you?---There could be injuries, yes.

Yep. Well, in the case of Kumanjaya Walker when it happened to him on an earlier occasion, there were puncture wounds to his leg and thigh. Do you understand?---I wasn't aware of that, no.

Have you previously been aware, prior to this moment, that Kumanjaya Walker was previously chased by a dog and bitten and hospitalised?---No, I was not.

THE CORONER: As a child?---A police dog or?

MR MCMAHON: Yes, he was 16 years old and he escaped from juvenile detention.

He was tracked, chased, whatever verb you want to use, and two kilometres later, the dog apprehended him, bit him on a number of places and he was taken to hospital for the injuries to be treated?---No, I wasn't aware of that.

He had injuries on the outside of his leg and on the inside of his thigh; deep tissue injuries and puncture wounds, but you knew none of that?---I did not.

Bearing in mind what I just told you, would you accept that a young person who had previously been attacked and hospitalised from a police dog apprehending him would be likely to have a real terror of police dogs?---I'm not sure.

You're not sure?---The premise of attack, I'm not sure whether that's what you were talking about either. He was apprehended by the sounds of what you've just described.

Okay. Well, let's use your words, "The dog came up to the human, apprehended the human, bit the human a number of times. The human went to hospital with some injuries." Do you accept that that might be terrifying for a 16 year old boy?---Potentially, yes.

What potential – what are you thinking of when it might not be terrifying?---I'm not entirely sure. I wasn't there. I'm not familiar with the circumstances, other than what you've just described to me.

THE CORONER: I think it would be terrifying to be bit by a dog and suffer that level of injury, whatever your age; having myself experienced a dog bite and having to go to hospital.

MR MCMAHON: You're the one we ultimately need to persuade, your Honour, so I don't need to - - -

THE CORONER: Well, that's why I'm letting you know.

MR MCMAHON: Do you accept that a young man in those circumstances would quite possibly suffer trauma or psychological injury?---Possibly.

Possibly or probably?---Possibly.

THE CORONER: It probably doesn't matter.

MR MCMAHON: Yes, fair enough.

THE CORONER: Because I'm letting you know that I think that people would be frightened and some people would be terrified, other people would just find it a traumatic event to be bitten by a dog.

MR MCMAHON: I've just got a few more questions, but I know that the people following me have next to none or none. Bearing in mind, Assistant Commissioner,

we're looking at prevention in similar circumstances in the future, what - - -

THE CORONER: Just before you go on. I'm sorry I keep interrupting and I apologise to the others who have almost no questions. So, I'm grateful for that.

MR MCMAHON: Had you known about Kumanjayi Walker's previous experiences with a dog, and if you had known that the dog was part of an arrest plan, would that have concerned you or changed decisions in any way, or changed your communication?---Not necessarily. It actually potentially works for the arrest plan, because if Kumanjayi Walker is so affected as described, it may have led to a peaceful apprehension because of the mere presence of the dog.

Yes, it's a better way to arrest him, because he's more terrified and therefore easier to arrest?---Not necessarily. I'm just saying that it might have led to a without incident surrender.

Although – and you haven't heard this evidence, but the evidence from others is written or verbal, he was expected to run?---I'm aware that that's what you've provided to me today, yes.

So, what's the criteria for determining whether – and you may not be able to answer this, for whether a dog should be released to run after or chase a human being?---I'm not able to answer that. That's a question for a trained handler to answer, I would suggest.

There is no criteria to turn, for instance, concerning the seriousness of the offending.

THE CORONER: He is unable to answer.

MR MCMAHON: Pardon?

THE CORONER: He's unable to answer.

MR MCMAHON: But your Honour, I think the next question might clarify that. And if he can't – whether the seriousness of the offending is relevant to whether to unleash the dog?---I'm not sure.

Okay. I'll just say the next set of questions, Assistant Commissioner, are very serious questions. You understand that most and sometimes all of the people in juvenile detention in the Northern Territory are Aboriginal?---Yes.

Usually, it's more than 95 percent?---Yes.

And you understand that something like 85 percent of the adults in prison in the Northern Territory are Aboriginal?---Yes.

So, given the number – given the percentage of the people in prison who are Aboriginal, it's unavoidable to conclude that using dogs to hunt down people has to

be seen as a tool which is used mostly against Aboriginal people?---So, the term "hunt", I don't accept.

Sorry, I apologise for that. Using dogs to apprehend and bite and latch onto people is a tool which is used - - -?---Again, I don't accept that premise.

(Inaudible)?---The Northern Territory Police are responsible for community safety. Unfortunately, community safety includes apprehending people who are impacting on that community safety, no matter where that might be in the Northern Territory. Unfortunately, as a consequence of the way in which society operates, a lot of those people are Aboriginal and unfortunately that in the context of the Northern Territory that is so.

So in terms of keeping an eye on that and given your rank and that you look across, as I understood when you said earlier, you look across, everyday you're given information about what's happening around the Territory, so I suppose that's a kind of overview review of what's happening on a daily basis, so you get a really good feel for what's happening around the Territory. That's what's going on there?---Particularly in the Top End of the Northern Territory, yes.

So I'm just – these questions are about data. Can you tell us how many people are apprehended by biting or by dogs each day or week or year?---Not off the top of my head.

Is that data that the police collect?---Of course.

And do you have the data showing how many of those people who are apprehended by dogs, where they're bitten, how many or what percentage of them require medical attention?---I would assume so, yes.

Do you have data on how many people who are apprehended by dogs and bitten by dogs in that process are charged or not charged after being apprehended in that way?---Look, I'm unsure of that but I'm sure that that information could be sourced if required.

And do you have data on whether the people who are apprehended by dogs in the way I've discussed are Aboriginal Torres Strait Islanders or not Aboriginal Torres Strait Islanders?---Again I would assume that that data could be sourced.

So it's implicit in that answer you agree that it's important to have such data?---Yes.

I've probably gone over my time. I do have a few more issues but I think I'll - - -

May I take two more minutes or is that the (inaudible).

THE CORONER: Yes, take two more minutes.

MR MCMAHON: I don't take much time in the whole (inaudible).

I'm going to ask you a few questions rapidly, as you know time is in issue. Again, my client is looking at prevention and I'm not generally interested in the text and what they say, I'm not going to ask you about the data, what the words say in the text. But firstly, there's been – correct me if I'm wrong – there's been no discipline about those texts in the police force, about the people – upon the people who have used the text messages in the way that - - -

MR FRECKLETON: Your Honour, I object. Wrong person, Mr (inaudible) will be able to answer all of this.

MR MCMAHON: All right, thank you.

You said, as I understood it, you said the IT is disbanded?---Yes.

Does that mean it doesn't exist anymore in Southern Command?---As I understand, yes.

Has it been replaced by something else with a different name, similar kind of unit?---Not to my knowledge.

MR FRECKLETON: (inaudible), your Honour.

MR MCMAHON: Pardon?

MR FRECKLETON: (inaudible) Mr Smalpage's affidavit your Honour.

MR MCMAHON: Thank you, Mr Freckleton, Dr Freckleton.

And finally, you were asked about guns before from Mr Boe in the back row and to summarise bluntly, you said although you're open to a conversation on whether police should use guns, you are open to having the conversation as a matter of process but that it wouldn't change your mind?

THE CORONER: About carrying guns.

MR MCMAHON: Carrying guns on your accoutrements belt. Have you done - you have to say yes?---(No audible response).

Have you done any study or research or has any study or research been made available to you about the decisions made in some other countries such as New Zealand or the United Kingdom or Ireland or Norway or other countries, for police not to carry guns as a matter of their daily accoutrement?---Not myself, no.

Thank you, your Honour.

THE CORONER: Thank you.

Other questions?

MR MARINA: I'm next, your Honour.

THE CORONER: Yes.

MR MIRANDA: Commissioner, you were asked questions by Dr Dwyer earlier today about whether you considered what I will call the Rolfe barbecue and having the capacity to directly or indirectly contaminate the investigation or the evidence obtained as a cross investigation. Do you recall that?---Yes. Before – I don't know who you are and who you represent.

Sorry, I act for Constable Rolfe?---And you are?

Mr Miranda?---Thank you.

Do you recall those questions?---Yes.

Now you have to agree though, wouldn't you, that in the context of events leading up to the death, the capacity for those (inaudible) to contaminate the evidence or the investigation and to be ameliorated if not completed by virtue of the fact that those events were captured on body-worn footage?---Yes, they were but that captures whatever that camera's looking at. It does not capture everything else that's happening around it. So I don't accept that at all.

But in the context of this case though, you know, don't you, that each of the officers who were deployed and were in the vicinity of House 911, were all (inaudible)?---So no, I don't know that. I haven't kept a track of - - -

Accepting that. You'd appreciate, wouldn't you and you'd accept, wouldn't you, that that has the capacity to ameliorate the effect or the ability for these officers to have contaminated, whether directly or indirectly, the evidence obtained since this investigation?---Only so far as what you're talking about but there's a lot of other activity that occurred prior to and after that is not captured by the body-worn video. So it's the entire process. It's not just that.

I understand that. But you appreciate what I've asked you about is the events immediately leading up to the death - - -

THE CORONER: Look, it also depends on where the body-worn video is facing, Mr Miranda.

MR MIRANDA: I appreciate that your Honour. But I'm just dealing with the events immediately (inaudible). There's no (inaudible) in the context of the (inaudible) House 511 (inaudible) Kumanjaya Walker?---511.

511, sorry. What's easiest for everybody?---It doesn't capture everything. It captures what it's looking at, as said. It doesn't provide the 360 view of what's occurring around that environment.

There is certain limit to capacity to the investigation (inaudible) given that (inaudible) a lot of what occurs captured on body-worn footage?---It captures some material but there are other things that occur. I wasn't there, I haven't seen all the footage so I can't comment on that specifically. It doesn't detract from the fact that that type of activity has the potential to contaminate witness evidence and should not have occurred.

And when you're talking about that, you're obviously talking about that (inaudible) potentiality to that regard to ultimately what is seen on the footage here on 9 November 2019?---Well the footage is clear for everyone to see but it's everything else that happens around that.

Sure. You know that this investigation concerned an interaction in particular between Constable Rolfe, Kumanjaya Walker in House 511?---In a very simple sense, yes.

Yes. You know that that incident in terms of what happened to Constable Rolfe, and Kumanjaya Walker and what happened tragically afterwards was captured on body-worn footage in (inaudible)?---I'm not aware that anything other than the actual incident inside the house was recorded.

Have you seen that footage?---Of in the house? On a channel 7 show I saw some it, that's the only time I've seen it.

I'm going to change topics and just ask you about your interaction with Jody Nobbs on 9 December 2019. Now in the statement you did for the purposes of the criminal investigation as I understand it, of 9 December, you make reference to general support having either been requested by Nobbs or provided by yourself, I think, on about nine occasions. Now do the words general support have any particular application in the context of the deployment of the IRT?---Yes.

Now you haven't read the SOP or the IRT prior to 9 December – November 2019, have you?---No.

Right. You've now read it haven't you?---I have.

And you would appreciate, wouldn't you, by virtue of those SOPs that there are, in fact, two bases upon which the IRT, as they existed, may have been deployed?---Yes.

Endorsed?---Yes.

One of those is a high-risk deployment?---Yes, that's what the language is, which – yes.



All right. And you have previously given evidence that was something the required the assistant commissioner's approval?---That's for TRG, not for IRT.

That's right. If there was to be a high-risk deployment and the IRT which accompanied TRG, that was something that required the assistant commissioner's approval and - - -?---I believe so, yes.

And you obviously explained that in your statement on 5 December 2019, didn't you? That was something that you were aware of, at least, by the time you did your statement on 5 December 2019?---I believe so, yes.

Now, the second basis upon which the IRT might be deployed is for what's called a "general support operation", isn't it?---Yes.

And you hadn't read this SOP as of 9 December (sic) 2019.

MR BOE: 9 November.

MR MERENDA: 9 November 2019, sorry?---Yes.

And so, what I guess I'm ultimately getting at is, if you put yourself in the position of Nobbs, putting to one side any distinction between what you say he said and what you say you said, he has come to you, on your statement, for an authorisation, hasn't he?---Yes.

That authorisation relates to the deployment of IRT staff?---Yes.

And the approval you gave was for general support?---Of – so that's the nuance in that decision. So, it was for general duties staff to provide support to Yuendumu and Superintendent Nobbs was going to use the IRT staff as they were the easiest staff to access.

I understand that's your evidence?---Yes.

You describe in your statement throughout, having deployed or authorised the deployment of these staff on the basis that it was general support, hadn't you?---Yes.

Now, you put yourself then back in the position of Nobbs, who has called you requesting an authorisation, and you have authorised it on the basis of using the words in your statement, "General support". So, you can understand how that might have been perceived by Nobbs to have been an authorisation of the deployment of the IRT.

THE CORONER: Where is this going?---No.

Because you can ask Nobbs, Superintendent Nobbs about this, what he understood.

MR MERENDA: Well, I understand that, your Honour, but these two witnesses are obviously in conflict with one another in terms of what happened, and ultimately, what I'm getting to is what was ultimately authorised for the deployment from this witness' account, general support. That has a particular application and context for the topic of the SOP, particularly when you have regard to exhibit 17-3, I'll just continue reading it out, because it may be of assistance to the witness. "The kind of duties that a general support framework gives support was for example, the assistance in domestic violence team, the assistance in the arrest of persons evading police or (inaudible) custody". So, those kinds of things, of course, fall within the framework of the terminology adopted here by this officer. And that's why it's important. So, there was a point there, I make my point in any event.

THE CORONER: Do you want him to – do you want - - -

MR MERENDA: I guess what I'm getting at - - -

THE CORONER: - - - the assistant commissioner to agree with you?

MR MERENDA: Yes, I do. So, I suppose the point I'm ultimately getting at is you hadn't read that SOP and didn't appreciate at that point in time that the type of moment for sure that we're talking about in general support in the context of the IRT included things such as assisting in the arrest of violent offenders?---I get all that. But in my mind, it was irrelevant, because that's not what I was deploying. I wasn't using that policy to make that decision.

In your mind?---Yes. And that's what I relayed to Superintendent Nobbs.

That may not have been what you were conveying by use of the words "general support" in the context of deploying officers from the IRT, though. Can you accept that?---I can see your point.

All right.

May it please the court.

MS OZOLINS(?): I have no questions, your Honour.

THE CORONER: Mr Hutton.

MR HUTTON: Thank you, your Honour.

XXN BY MR MR HUTTON:

MR HUTTON: My name is Hutton and I appear on behalf of NT Police. You've been asked by various counsel today about the withdrawal of health staff from Yuendumu on 9 November 2019, do you recall whether you were aware that day that an arrangement had been put in place for health staff from the nearby

community of Yuelamu to cover Yuendumu until the service could be restored?

I beg your pardon, I think I've opened by latest (inaudible).

The premise of the question that an arrangement (inaudible) is not reflective in the evidence and so it could only be the answer the accused would give, your Honour (inaudible).

THE CORONER: Not reflected in the evidence. There was some arrangement, wasn't there?

MR HUTTON: There was an attempt to put in place an arrangement, but what Sergeant Frost indicated wasn't tenable in terms of accompanying Yuendumu police officers to Yuendumu, Yuendumu health staff at Yuendumu. Your Honour - - -

THE CORONER: Yes.

MR HUTTON: - - - I think the arrangement was put in place finally, as is demonstrated by the attendance of the Yuelamu staff to community. Sergeant Frost gave evidence about whether or not there would be an escort could - - -

THE CORONER: They would be accompanied.

MR HUTTON: - - - be provided, indeed. But the arrangement was certainly put in place. I don't think there's any dispute about that.

THE CORONER: So, there was an arrangement in place for Yuelamu to assist. The arrangement from the health staff point of view included support or accompaniment by police and police said they weren't going to be in a position to do that, given their staffing.

So, that was the arrangement, how that might play out in those circumstances. In this circumstance, the Yuendumu staff came, even though they were not met by police.

MR HUTTON: That's correct, your Honour. And certainly, the evidence is not limited, unless there (inaudible) Sergeant Frost on this subject.

THE CORONER: I'll allow – I mean, that's the situation, so there was - - -

MR HUTTON: No, we appreciate it qualification, but perhaps other parties to the arrangement didn't see it as (inaudible) or that they didn't agree with it, but I appreciate your Honour's qualification, if the question is asked on that basis.

I'll try again. Were you aware that an arrangement had been put in place with the staff in Yuelamu to respond to emergencies in Yuendumu if the need arose on the evening of Saturday, 9 November?---I only became aware of that as the events of the night unfolded.

All right. The arrangement that had been put in place for two staff members to be on call in Yuelamu from a health perspective and to cover the community of Yuendumu and Yuelamu. And that in fact mirrors the arrangement, if you like, that the police on call in Yuendumu have, generally speaking. Is that correct?---Yes, so the police at Yuendumu manage response requirements into Yuelamu.

Yes?---Yes.

And this court has received evidence as well, as I understand, that in fact there are other places police are on call in Yuendumu might have to travel to beyond Yuelamu, such as the Granite (inaudible) line. Is that correct?---That is the Yuendumu policing district. That is within that footprint, yes.

You've been asked a lot of questions about statistics this afternoon. Assistant Commissioner, are you in a position to provide an estimate of how many arrests Northern Territory police place each year?---I do have a figure in my head, your Honour, but I'm loath to speak to it, because it may not be completely accurate. But it is a significant number. We can provide that information to you, specific to your question.

All right. It would be greater than a thousand?---Yes, unfortunately.

Would there be a number as well, Assistant Commissioner, of how many of those arrests resulted in the person arrested requiring emergency medical care?---There would, I would suggest, be a way to collect that information, yes.

Do you have an estimate for what that number would be?---So, from a policy point of view, it's called a – we complete a custody insert notification report and anyone that we take into custody that has sustained an injury or requires treatment for an injury, however that injury was sustained and whether it's to do with interaction with police or not, that data is collected. So, there would be a way of collecting that information.

Thank you.

THE CORONER: Dr Freckelton.

MR FRECKELTON: I'm in your hands, your Honour. There is myself and Dr Dwyer, who I assume has some further questions.

THE CORONER: I've got one question, so I might just ask it before you, Dr Freckelton.

MR FRECKELTON: Yes.

THE CORONER: Because it might be relevant to something that you want to cover as well.

MR FRECKELTON: Thank you, your Honour.

Assistant Commissioner, we've heard a lot of evidence about the importance of ACPOs in community assisting officers in community to be culturally appropriate in the way they carry out their duties and on the night of Kumanjaya Walker's passing there was a team of senior officers in Darwin and possibly also liaising with senior officers in Alice Springs, making decisions about what should be happening in Yuendumu and my question is what senior Aboriginal police officer was available or should be available to teams such as that making decisions which have a very significant cultural component in communities?---In short, there wasn't one, your Honour, not during that particular first number of hours when a lot of those critical decisions were made, there wasn't someone working for the police, that was providing that advice.

Is there a senior Aboriginal Police Officer available at all or should there be such a position created?---So I suppose the way in which the Commissioner has developed the community resilience and engagement command in essence is part of what that is that you're speaking of, so that is led by a person who is non-indigenous but working for her is an indigenous male leader and he is leading a team of all predominantly indigenous employees that have a footprint across all of the Territory and providing that type of information.

And do you think that a senior Aboriginal person in that role might have assisted decision-making on this night?---Look, possibly if they had an understanding of the cultural context in Yuendumu. But just because you're indigenous doesn't mean you understand the cultural nuances for a particular community.

And then the other questions - and I probably keep going back to this matter and it's in relation to communication, do you think there should have been someone specifically allocated to be in charge of communication with the family? There was one point there where you said you "Didn't have the capacity to turn my mind to communication" so when there was going to be a delay should there have been someone specifically identified and allocated as the source of communication with the family?---So there was, an that was Senior Sergeant Zang when he came onto - cam into Yuendumu. Even though we may have allocated that responsibility to someone, I still wasn't in a position to authorise that contact in any case, because of all the other concerns that I have raised, but I wouldn't have - we could have allocated that role to someone that would become the family liaison, which is ultimately the role that I took on in any case in the coming days and then handed that responsibility on to others over time.

Finally and sorry, Dr Freckelton, that role would not necessarily have been communicating in relation to the passing at the time of the passing. It could have been a role that was, as you say, a liaison, so at least the family had someone to speak to and what was being communicated could have been determined by that person - what and when it was communicated?---So in theory, yes. In practicality, the way in which that environment transpired made it much more challenging for that to be the case because we've heard that Sergeant Zang actually made contact with

a family member and provided incorrect - false information to him because - I don't know why but I can only assume it was because he didn't know how else to provide that communication.

So is Sergeant Zang a skilled negotiator and mediator and communicator? I mean, that's the kind of person that I'm thinking about here?---Look, I don't know what his background in that regard is other than to say - and this is not to denigrate sergeant Zang at all, but English is not his first language - but that is irrelevant to this scenario. I had only available to me what resources were available at that point in time and that didn't mean that the most appropriate person to be that communication point may have been in that police station. I mean, Sergeant Frost would have been the right person but again, she had been on shift for a long time and there needed to be respite for her, for her own wellbeing. There were potentially other people that could have done that that were at the Alice Springs Police Station that weren't at Yuendumu, for example.

Sure. Communication can be by phone?---Mm mm.

So you could have had, possibly - it might be a bad idea, I don't know but a skilled communicator and mediator on the phone with family from a very early point in time and then behind the scene decisions could be being made about what, if any, communication was provided and that skilled communicator or negotiator could have been also providing expert assistance in relation to managing those communications?---Potentially, your Honour.

Dr Freckelton?

MR FRECKELTON: Thank you, your Honour.

Assistant commissioner, were there to be such a skilled communicator, in the hours after Kumanjaya passed when the decision had been made by you and others not to communicate that he had passed, how constructive do you think it would have been to have that skilled communicator speaking with the family but not telling them that their loved one was no longer with us?---Extremely challenging. How you can maintain the conversation without providing the level of information that would have been required, that's all the community would have been after and whoever you were speaking to, that would have made it very difficult which again, not to speak for Sergeant Zang but that's ultimately what led him to make - provide information that he did that was incorrect.

And if the skilled communicator had spoken extensively with the family and the response to the question which you are suggesting would have been uppermost in their mind is our loved one alive? If so how badly hurt is he? The person had misled them, would that have ended up being a constructive exercise?---Look, not at all and that's obviously what - part of the conversation that we're having now about the way in which a plan was put in place for the execution and I take it where your Honour is going is about the execution of that particular element in the plan and more thought that we could have provided to that actual aspect.

Would you be comfortable with further thought being given to effective and straightforward communication with the family in comparably tragic circumstances?  
---The - - -

(Inaudible) communication of the death of their loved one, how it should be done, when it should be done - to whom it should be done?---Look, we certainly need to give all that consideration but again, we also need to consider the subjective context within which that scenario was being played out. If it is in a remote community versus a regional or urban setting it's going to be a different set of circumstances and different factors are going to be required for consideration around the decision-making and the risk associated with that.

I want to come to the list issue now please, because you made two decisions on the night which are sensitive and about which you've been asked a number of questions. First, not to have a relative of Kumanjayi present during his last period of time and second, not to communicate for some time that he had passed away. You have told her Honour that there were various sources of information, tell her if I get any of this wrong please. You received information from Mr Hand?---Correct.

And you've received some information from ACPO Williams?---Yes, correct.

You received some information from Mr Nobbs?---Correct.

And otherwise you've drawn on your own experience to make these two difficult decisions?---Yes.

Could you tell her Honour a little bit more please about your own experience in respect of this community and other communities that led you to fear that if you communicated information that Kumanjayi had passed away, there could be highly adverse consequences for those in the police station and then potentially for those in the community?---Particularly based on the advice that Derek Williams had provided me about his thoughts and my previous experience where information had been shared with senior community members and their reaction, their emotional reaction was completely out of context of what I expected and violence ensued, I was very concerned about not so much just the individual that has provided the information but the flow on effect of that information as it was shared into the community and the reaction of the community. Whether the people were at the police station or not, it's a very short distance to get back to the police station and the risk that posed to the police and to Kumanjayi prior to his passing and then after his passing, in my mind, was, as I've already said, I couldn't ameliorate that, I could not get past that risk that I had in my mind. I had experienced the level of emotion from people that, as I said, you would not expect. And the mere fact that we did not have – we had a fatigued workforce or a workforce that had been involved in a very serious incident already at Yuendumu and their ability to be able to manage any additional conflicts within the police station would have been severely compromised, challenged. So all of those factors were part of my thought process. I also was concerned about – I provided this information earlier – that if the police station was overrun by the community,

what impact that would have on other communities and the way in which other communities might react to the Yuendumu Police Station being, to use, lack of a better term, taken by the community away from police.

Are you familiar with other circumstances of which there have been eruptions of violence in Yuendumu? I'm not going to ask you specifics?---Yes.

Is that something from time to time, to your knowledge, had happened in the past 15 years at Yuendumu?---Yes, unfortunately on a relatively regular basis.

Likewise, were you aware of circumstances in which there had been retributive violence in other communities comparable to Yuendumu after incidents had occurred?---Yes, certainly I experienced those scenarios whilst working at Papunya and at Kintore.

Briefly could you describe such scenarios so that her Honour can appreciate their relevance to you?---So whilst at Papunya there was a – I was exposed to and I had little control over a cultural ceremony that occurred in my presence with me. I was standing by the side of a senior Aboriginal community police officer at the time and that ceremony involved many hundreds of people that culminated in a young man being speared by an elderly gentleman and other weapons and other violence occurring around that particular incident, that I had no control over. I wasn't able to move in the context of what was happening. I was also exposed to violence, the use of traditional weapons at Kintore where people were injured. Also at Nyirripi in fact at times where traditional weapons have been used in those sorts of scenarios over sort of my exposed times in those remote communities.

So how did those prior experiences factor into your decision-making in relation to those two decisions that you've described to her Honour?---So particularly – so the issue that I'd spoke of at Papunya involved Walpiri people and Arrernte people and the emotion and the cultural reaction to that environment of what was happening and that cultural process, the – its extremely hard to explain but there was no controlling it whatsoever. The emotion was something that obviously is steeped in history in the way in which that transpired. And that experience resonated with me that once something was going to happen, it was going to happen regardless of what interactions may have been put in place and that involved the Walpiri in that particular scenario and that was part of the decision-making, led to some of the decision-making that I had in mind that I had been told by – in fact I spoke with a Walker man earlier, one of those Walker men told me that we've been involved in these conflicts for many, many years. You're here for your time. These conflicts will continue on after you leave as well. And that goes to the fact that it's almost part of – I'll be very careful here because I do not want to be disrespectful at all – but it happens regularly in the community to the extent that there's a level of familiarisation in that regard. That's sort of the way in which this particular person was talking to me. And it was all of that knowledge about the way in which it's – it doesn't stop until the cultural goal is achieved and that was my experience with Papunya particularly and I did see that also transpire in Yuendumu on a number of occasions where the conflict would not stop until the cultural outcome was achieved. And that's – I had all



of those elements in mind that are really hard to explain to someone when you're trying to make those decisions. It's also very difficult to explain here today before you, your Honour. But they're the sorts of things that I was considering when I was making these decisions and I actually had a very short conversation with Superintendent Sean Gill(?) who at the time was in charge of the TRG, because he had been involved in some of management of the conflict at Yuendumu and he had an appreciation of some of my concerns in that regard. And that contact with him was actually important for me to ensure that my decision-making wasn't a figment of my imagination, there was reality attached to my concerns which when I spoke to him briefly he confirmed.

You mentioned earlier that you were told that the health clinic was on fire?---Yes.

How did that factor into the concerns that you had?---As it turned out that wasn't the case.

Just putting you in the mindset that you were in at the time when you made the two decisions?---Well if that were to be the case when I got that information, that potentially was evidence that the community was starting to react against other government type assets within the community, if that had have been the case. And that further confirmed the concern in relation to what the community feeling was more broadly outside of just the police precinct.

After these matters and the 24 hours after the death of Kumanjayi were there expressions of violent anger in other parts of the Northern Territory?---So as part of our response to this incident we had a small team in Darwin who were monitoring all of the police stations and when we had the cultural ceremony, I did say Wednesday earlier, I believe it was on the Tuesday afternoon, the cultural ceremony that was held at the Yuendumu Police Station for the Yuendumu Walpiri community, a number of handprints were placed on the outside of the police station. And although that technically is defacing property, it was part of the process. It's not a traditional part of the process but it's the process the community undertook and we allowed that to occur. Other communities across the Northern Territory had similar acts occur but not in – with the same intent. There was paint that couldn't be removed thrown at the Mutitjulu Police Station. I believe there was some damage caused to Lajamanu Police Station. There was someone who entered the police compound and threatened police at Galiwinku and ultimately at a point in time after the police post at Willowra, which was unoccupied by police at the time, was entered and damaged and rendered inoperable from thereon in. There may have been other instances, but they're the ones that spring to mind.

Looking back, with the knowledge that you had at the time, what do you say to the proposition that you overreacted in the two decisions that you made?---So, as I've already indicated in the evidence I've provided, I've contemplated those decisions a lot over time and I still cannot get over the fact that the risk of the unknown that I couldn't ameliorate, I couldn't get past. So, in my view, I didn't overreact. I made a decision, a very difficult decision, and that's a decision for me to make and a cross for me to bear. But I made a very difficult decision at that time and it wasn't one

about overreaction, it was one about community safety at that point in time.

I want to finish with a more positive issue. You've mentioned the community resilience and engagement command, that's a new initiative of the Northern Territory Police Force, is it not?---Yes, it is. Commissioner Chalker started that not long after he commenced.

Can you summarise what it is and what it's directed toward?---It is about – so the community resilience aspect is twofold. That's about making sure that communities have the skills and capabilities to actually manage and prevent things from occurring prior to occurring, community safety at its heart, a resilience also goes to the emergency management context, so remote communities, particularly in the Top End and on the Northern Territory – northern region emergency management controller. Having those people there is very important for the emergency management context as well in say, the cyclone or flooding context. Those individuals who we have employed, 37 ALO's as I – Aboriginal Liaison Officers, a vernacular being ALO, have been employed and trained and recruited from remote communities and they have returned to remote communities. In fact, I believe there are - there have been up to five new ALOs working at Yuendumu, whether there's five there now, I'm not entirely sure, but they certainly have been. And that's all about using community-based people who work for the police to bridge that divide between community and culture and Northern Territory law enforcement, so that we're doing the work together from a community safety point of view. Prevention first, if we can prevent things from happening, then we don't have to use all the other tools that are available to us. And that is at the heart of what that process is.

Now, the use of ALOs is in its comparatively early days. Do you have any perspective of whether it is achieving constructive outcomes yet?---Look, absolutely. And we've heard lots of positive outcomes in relation to scenarios that are played out. So, in an emergency management context, when we had flooding of the Roper River and Beswick and Barunga had been separated, an ALO was on one side and the police from Barunga were on the other. But the ALO was able to ensure that the community was safe and all the information was shared. That was a good example. Very early on in the development of that concept. I'm also aware of a homicide that occurred in Yirrkala in North-East Arnhem Land and ALOs and the ALO team more broadly, the community resilience and engagement team, more broadly were instrumental in negotiating the safe apprehension of the people involved in that particular incident. So, there's two examples of operational use of those particular assets, but also I'm well aware of the good engagement work that's happening in schools and those locations, the ability to break down some of the language barriers as well. There's lots of work, good work, happening.

Thank you, your Honour.

HER HONOUR: Dr Dwyer?

DR DWYER: Your Honour, I have about 15 minutes. Can I ask if the Assistant Commissioner is available tomorrow morning to that? If he's staying in Alice Springs

overnight, in any event?---My plane leaves at 9:30, as I understand.

Well let me just – yes, thank you. Assistant Commissioner, you were asked some questions by the counsel appearing for Constable Rolfe to suggest that the Rolfe barbecue as it was put, after the death of Kumanjayi, was ameliorated by the fact that the death of Kumanjayi, or the shooting of Kumanjayi was captured on body worn video. You remember those questions?---Yes.

You agree that what can be seen by body worn video is not in fact exactly what can be perceived by the naked eye?---Yes, it's shot from whatever the camera's positioned on the uniform of the officer that has that particular camera attached.

And it's obvious, isn't it, the body worn video doesn't necessarily capture what the plans were in terms of entering the house?---If that weren't turned on, no and that – it's ability to capture audio, as I understand, is not as strong as its ability to capture the visual aspect.

And it was understood by senior police, wasn't it, that in relation to any criminal liability as to what had occurred in House 511, the issue of self-defence was going to loom large? Self-defence to start with?---I can only assume so, yes.

And whether or not that officer was acting in good faith?---Of part of the criminal investigation I would assume yes.

And whether or not that officer was acting in defence of another potentially?---Potentially.

And all those issues were – it was important to safeguard the independent evidence of the officers involved in that house, wasn't it?---Yes.

Can I – I'll ask that you be provided again and I'll just hand it to you, MFI C which is the collection of text messages. And I've opened them on the page. I don't know if you've had the opportunity to reflect on this, Assistant Commissioner, but could you look at page 8 and it's a dialogue between a particular officer who I won't name and Constable Rolfe on 10 November at 11 am. Do you see there there's a reference to Assistant Commissioner White's press conference?---Yes.

And the text is, "Fucking woeful. Idiots just replying to every question with that will be a matter for the Coroner. Fucking clown". I interrupt myself to say that level of disrespect towards a senior officer is completely unacceptable, do you agree?---And it's highly unnecessary, yes.

But what I want to ask you about is this. He goes on to include in that text message that – to Constable Rolfe, "The member has to answer his critics with IAMOPI for intent and then there's a derogatory term used about Kumanjayi, telling him he was going to stab the police; A for ability, he had the ability to do so because he was a young and fit male who looking at Rolfe would have had size disparity; N means he had an edged weapon and told the police, he more than like said was going to kill

them; O opportunity. And then over the page, "The members let him get close enough to be afforded the opportunity to stab one of them and coupled with all of the above, IAMO plus P equals preclusion". And then he's got a quote, "I was precluded from all other options available to me being distance, time, cover, taser, baton, spray, etcetera. So I had no other option but to protect myself and those with me by shooting the offender to gain immediate subject control and incapacitation, that what I did (taught by some experienced old members in '94 never) forget it, IAMO plus P". Do you agree that it is extremely concerning that another officer is texting Constable Rolfe with what appears to be suggestions as to how evidence should be given about what that occurred in that house?---Absolutely.

And that is in breach of General Orders, isn't it, that require officers to give a version of events independently of other officers?---Look, it is. I mean Rolfe obviously was a recipient of that, he didn't share that, so Rolfe should have disclosed that he'd received that information.

And other officers in the Northern Territory Police Force should understand that they should not be potentially interfering with an involved officers evidence by texting them something like that?---Yes, of course.

Are you aware of whether or not that officer has been sanctioned or disciplined or spoken to in any way?---No, I'm unsure.

In relation to the issue of text messages while I'm there, you were asked some questions about your reflections on the messages and you've done that. Are you aware that the release of these messages and the revelations about their content have generated some discussion within members of the police force currently as to whether or not they are - should be of concern?---I am aware that there has been some conversations with the workforce. Not specifically or directly with me but I have heard that from within - within the agency, yes.

You're aware of an online publication called "The NT Independent"?---I am aware of that.

And you don't subscribe to it yourself?---I do not.

Can I invite you to - well are you aware of an opinion piece published by a former police officer that is titled "The last refuge of police comradery has been shattered forever" and suggests that those text messages were, in fact, a reflection of police comradery?---Well I haven't seen that, no, I'm not aware of that, sorry.

Given that - or what is your view about whether or not it's acceptable police comradery for a sergeant to text an officer in Alice Springs referring to "bush coons" and "bush cops"?---No, that's entirely unacceptable. That's not comradery at all.

Given that that is generating a dialogue with an ex-police officer at least, offering that opinion, are you aware of anything being done by the Northern Territory Police Force to demonstrate leadership around that issue?---Well, we would've heard the

Commissioner come out and speak very briefly to the issue of the text messages after they were first heard in this court. We don't condone that. That was a very isolated scenario and we will continue to talk to our workforce, our people, particularly our leaders, our sergeants and senior sergeants to make sure they understand that this is not acceptable behaviour and we don't tolerate it, it's not part of our culture. We don't tolerate it - we didn't tolerate it then and we certainly don't tolerate it now and if anyone is aware of this type of behaviour in the workforce we need to remove it immediately.

You were asked a question about the numbers of Aboriginal police officers in the Northern Territory. Are you aware of what the highest rank of an Aboriginal police officer is in the Territory currently?---So the - so within the entire agency the highest ranked Aboriginal person is - is an executive contract officer one, but he is not a police officer. The highest rank of an Aboriginal person, as I understand is Sergeant.

Do you think that it's an important way to combat negative attitudes, to promote Aboriginal people in the workforce?---It's an extremely important way in which our agency needs to reflect the community that we are, as I sort of indicated earlier and we have - we regularly have conversations about identifying future indigenous leaders within our workforce to be able to support them to become those leaders. Now, a leader doesn't need to be someone with rank necessarily, but they just need to be instilled with the tools to be able to lead. Anyone can be a leader but we also at the same time need people of particular ranks within our rank structure in different locations across the territory to better reflect the Territory community.

In terms of ACPOs in the community, you agree, don't you, that they are a vital part of effective policing in the Northern Territory?---Have been for a long time and will continue to be, yes.

And they should be treated with every respect?---Yes.

And they should be valued in terms of promotion and - and pay?---Which is exactly what the structure in my view looks like and the fact that we've created this transition pathway for our Aboriginal Community Police Officers to become constables through a transition program.

There are some ACPOs who don't want to be constables, is that right?---Correct, yes.

Do you think that there should still be a pathway for them to be promoted and valued?---Well, they can, so there's a pay structure that exists that allows them to become Aboriginal Community Police Officers first class and then second class and that - a lot of it is based on the courses they complete and then time within particular ranks and a lot of those courses allow them, if they chose to transition, to complete the transition component later on. But as you say, some people choose not to and that's entirely their choice.

Assistant Commissioner, I appreciate you've been asked some questions about whether you are open to this or open to that and others will be asked that too. Would you be open to engaging in dialogue with the ACPOS across the Northern Territory to see if they feel that they are being adequately valued?---It's an interesting concept and I know we've actually had those forums for Aboriginal Community Police Officers in the past and I'm certainly happy to be a part of that again in the future.

The final topic then is when Mr Boe was asking you some questions you were shown a particular photograph that had been taken by the ABC. You hadn't seen that photograph previously?---No, I had not.

You identified by virtue of the uniform, someone that you thought was an ACPO if that was - if the photograph was real. Can I ask you to assume that the ABC have assisted us by providing the footage and they are happy for us to use it. I think that Bec is able to assist by putting two other photographs on the screen. That's a photograph of another police officer. He appears to be holding a longarm, is that right? I appreciate it's difficult to see?---it is difficult but I'll take your word for it.

Okay. If you can ask - if I can ask you to assume that when you look closely to that photograph and it is not on a grainy screen, you can see a longarm?---Yes.

Or I anticipate submitting that to Her Honour, and then there's one other photograph, there's another police officer, and I think that's a little clearer?---Yes, I can - - -

Do you see a longarm there?---Yes.

Do you recognise either of those officers?---No, I do not.

All right, that can come down from the screen. If I can ask you to assume that the - I anticipate tendering those photographs. I am grateful to the ABC for providing them, your Honour.

Can I ask you to assume that the evidence will be that those photographs were taken on 10 November?---Mm mm.

Did you see officers holding long arms in the community - having seen those photos, do they refresh your memory?---No. No, I did not.

Did you see any behaviour of community members that would justify police holding longarms like that in the community?---The only thing that I'm aware of - so not necessarily. The only thing I am aware of that did occur is where myself and the Acting Commissioner were leaving the basketball stadium, rocks were thrown at us. By whom and from where I am not entirely sure but that's the only aggression that I was ware of that occurred on that particular day.

I take it from your answers that you're not aware that those particular police officers were posted in response to that?---No, I don't know where that was particularly taken.

Whose decision was it, at a command level that - assuming that those officers were walking in the community, carrying the longarm guns who was responsible for that decision-making?---I'm not entirely sure. I wasn't the police operations commander by that stage. To be - to answer that properly I need to understand where those images were actually taken within the community, to give that question some context.

Are you happy to assist us, to take that question on notice effectively and assist us? ---Yes.

I am noting, so that, your Honour, that we will hear from the forward commander Terry Zang and we'll also hear from officer Meacham King who was working with the TRG at that time.

Just leaving that to one side, do you think - or can you offer your opinion on whether or not, reflecting on that, you can appreciate can't you, that the community having been through this traumatic loss, just learning about Kumanjayi's death, would see those officers holding longarms as extremely intimidating?---Potentially, yes.

And that it is worth reflecting on what the community have to say about that in terms of learning about this incident?---Yes, and that's why we're here, so we accept that.

Nothing further, thank you.

THE CORONER: Just one final matter. You have suggested that text messages such as the ones we've listened to are isolated and that has been said on a number of occasions. If any police officers in the Northern Territory came forward with evidence of that kind of language being used, would they be supported by the Northern Territory Police Force if they chose to come forward?---Of course they would.

Anything arising from that?

DR DWYER: No, thanks, your Honour.

THE CORONER: Anything further (inaudible) - - -

MR FRECKELTON: Your honour, just to try to identify this issue about the officers holding longarms, there is a statement that is relevant to this and our understanding is that it was officers standing at the crime scene, that was House 511 on the next day. I'm not commentating on it but our understanding is that they were standing outside that house to protect the crime scene.

THE CORONER: Well, there's - - -

MR FRECKELTON: (Inaudible).

THE CORONER: Sure.

DR DWYER: There is a question that just follows from that. Assuming that information provided is correct, do you have a comment on the appropriateness of that, reflecting on that?---There was obviously decisions behind why that was done at that point in time which I wasn't privy to, so it's hard for me to make comment. I don't understand – I understand why they were there but I don't understand the decision-making behind it, so.

And we will be in a position to ask those people, but in terms of guarding the crime scene, was it the decision of the Forward Commander as to how the crime scene should be guarded on 10 November?---Well probably not. That may have then rested with the investigative team because under our policy a crime scene becomes the responsibility of the senior investigating officer. So it could have been a number of different people who were involved in that decision-making.

Can you remind us who the senior investigator was on 10 November?---I believe it was Superintendent Pennuto.

I see. Thank you, Assistant Commissioner.

THE CORONER: I've just got one more question. Have you ever seen a crime scene guarded like that before?---Probably not.

Thank you?---I have seen a few but - - -

Sorry, I should say, it's been a long day and you've also provided significant statements and lengthy material. We appreciate the understanding and expertise that you have brought to bear on issues in this inquest and we're going to – I am going to reflect very carefully on your evidence, in particular in relation to the decisions that you were making in light of your experience as a police officer. And I appreciate your evidence?---Thank you, your Honour.

WITNESS WITHDREW

ADJOURNED