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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 4 NOVEMBER 2022

(Continued from 3/11/2022)

Transcribed by:
EPIQ

THE CORONER: Mr Coleridge.

MR COLERIDGE: Good morning, your Honour. The next witness will appear by AVL. That's senior constable, I believe, I could be wrong, Kevin Agnew. I call Kevin Agnew.

THE CORONER: Thank you.

MR COLERIDGE: Your Honour, might I have leave to sit down while I - - -

THE CORONER: Yes.

KEVIN AGNEW, affirmed:

THE CORONER: Mr Coleridge.

MR COLERIDGE: Good morning. Could I ask you to restate your full name for the record?---Yes, good morning. My name is Kevin Agnew. Senior Constable attached to the Northern Territory Police recruitment section.

Thanks very much, Senior Constable. I should also say, my name is Patrick Coleridge and I'm junior counsel assisting the Coroner. I think you said that you were currently attached to the police recruitment section. You've been a police officer for approximately 30 years, is that right?---Yes, that's correct.

And in police recruitment since about 2011?---That's correct.

Can you tell her Honour something about what your duties involve as a member of the police recruitment section?---Yes. My job is to recruit new applicants and vet their applications, interview people. I attend various social functions, career expos, that type of things. And my primary job is to recruit new applicants.

So those social functions I take it are about effectively doing a bit of PR for the Northern Territory Police Force encouraging people to apply, so on and so forth?---Yes, that's correct.

Given that you've been in the role now, I think, for a decade, are you able to say something about whether it's getting harder, easier or staying the same to recruit in the Northern Territory?---At the moment things are a bit hard to try and get new applicants, only because there's a lot of competition out there with the military, with other police services. They're all looking at recruiting hundreds and hundreds of people and trying to get people to come to the Territory is a challenge. We do try and focus a lot on the Northern Territory as a whole, try and get applicants from within the Territory. And yes, it has been hard.

Would you say that perhaps today it's harder than it was five years ago?---Not necessarily. It depends on the type of applicants and the type of advertising that we do. If we're - and also the type of stream of recruits we're looking at. Because

constable recruitment might be easier than say Aboriginal community police or the police liquor inspectors. So it just depends what we're targeting at the time.

I might – I'm sure that there will be some other questions from the other parties about general recruitment policies and procedures, but I might limit my questions to Constable Zachary Rolfe's application. I'm not sure whether you recall the precise dates, so I might just give them to you. If I suggested to you that Constable Rolfe applied to join the Northern Territory Police Force on 9 February 2016, would that sound about right?---Yes that would.

On 28 February, he underwent a psychometric assessment?---Yes, that's correct.

On 16 March, so approximately three weeks later, he attended at an interview?---Yes, that's correct.

And on the morning of the interview, he filled in a document that's titled, "Personal history"?---Yes, that's correct.

And you've got a copy of that document in front of you?---Yes.

You don't need to go to it?---Right.

Now the interview lasted for around about an hour and 15 minutes?---Yes, that'd be correct.

And on that day, there were three panellists, yourself, Superintendent Sharmer, and Mr Bruce Van Haften, correct?---Yes, that's correct.

I think you identify yourself as the chair of the panel, does that sound right?---Yes, because I was given the responsibility of the recruit squad coordinator for that squad.

Does the chair of the panel have any additional responsibility, or does their vote count for more, within the panel itself?---No, not at all. It's – the responsibility is across the board of the three members.

Okay. Now in late March, so following the interview, there were a number of reference checks, and I think some more probity checks, would that sound right?---Yes, I didn't do a reference. I didn't do a reference check, and there would have been probity checks done, yes.

On 16 April, the Challenge Panel recommended that Constable Rolfe was suitable for employment?---I wasn't at the Challenge Panel, but I believe they did.

You have a copy of – it's a one page document signed by the members of the Challenge Panel?---Yes. Yes, I have it here in front of me.

Now that document notes the comments of the interview panellists, correct?---Yes, that's correct.

And it's signed at the bottom of the page by the Challenge Panel members?---Yes, that's correct.

On 16 April 2016?---Yes that's right.

And the recommendation was that Constable Rolfe was suitable for employment?---Yes, that's correct.

Okay, and then finally, and you can take it from me, but Constable Rolfe was offered employment with the force on 22 April?---Yes, that would be correct.

All right. When interviewing members and assessing applications, am I right that one of the most important assessments you make, is of the honesty and integrity of the applicant?---Exactly correct.

And for that reason, applicants are encouraged to provide all relevant information, good and bad?---Yes that's true.

And in fact, they're told in documents like the "Personal History Document" that, you know the force is not going to be unduly critical of minor mistakes, if they're full and frank about them?---Yes, that's true. I reiterate that as well, during the interview. And the personal history form is like a last-minute snapshot of a person before we interview them.

But ultimately a lot of the process is based on self-report, would you agree?---Totally.

You do - - - ?---Totally agree.

There are some probity checks?---Yes, that's correct.

But you are reliant, when making a recommendation on the things that you were told by the applicant?---Exactly, true.

I want to ask you some specific questions about things that you were told by Constable Rolfe. Can I ask you to go to his application?---Yes I have it in front of me.

Now this is an approximately six page document titled "NT Police Constable Application Form", correct?---That's correct.

Can I ask you to go page four?---At the bottom of the page, what's the number on the page?

Forty-four?---Yes I have it in front of me.

Okay, now there are three major sections on this page. One is "Police Service History", correct?---Yes, that's correct.

One is "Police Referee"?---Yes.

And one is "Defence Force History"?---True, yes, correct.

I just want to note two things on this page, if I might. The first is, under the heading "Police Service History", question two asks, "Have you previously applied to join any other police service?" You can see that?---Yes, I can.

And it appears that "Yes" has been ticked, crossed out, and then "No" has been ticked. Would you agree?---I agree, yes.

Can I ask you then to have a look at the heading "Defence Force History", there are a number - - - ?---Yes.

- - - of questions. But towards the bottom of that section, the applicant is asked "Have you ever been the subject of any complaints, internal investigations, or ever had any disciplinary action imposed on you?" You can see that?---Yes, I can.

And the answer is "No"?---That's correct.

All right. Can I ask you to go now to the "Personal History Document"?---Yes.

Now, on the fourth page of that document?---Yes, I have that.

In the fourth page of the document there's a prompt. And the prompt reads:

"In the space below write down anything else you think is important that the interviewer or the panel should know about you in considering your application. You may also write on the other side of this page. Remember, we are not looking for perfect people. So everyone has flaws or limitations. If there is anything else in your background which you think might reflect negatively on your application, now is your chance to tell us about it."

Now, first of all, that sentiment, that the force is not looking for perfect people, but is looking for honest people, is consistent with what you said a moment earlier, is that right?---Yes, that's right.

The second point was, Constable Rolfe discloses there, that in 2011 he was involved in an altercation in Townsville that led to him being issued with a fine?---Yes, that's correct.

But he makes absolutely no mention in that section, of any disciplinary history within the military, correct?---That's correct.

Can I ask you now to go to your notes of your interview with Constable Rolfe?---Yes. I have them here.

Can I ask you to go to page 26?---Sorry, are we talking about the interview?

The interview, yes?---Yes, sorry. Yes, page 26.

Now on page 26, question 44B reads:

“(For applicants with military experience) did you have any disciplinary problems when you served in the military?”

You can see that?---Yes I can.

And the answer, as you recall it, is “Nil”?---Yes, that’s what I’ve written.

Now I appreciate that these weren’t your notes, but can I ask you to take up Superintendent Sharmer’s notes from the interview?---Yes.

And can you turn to the same page?---Yep, 44B?

That’s right. And in answer to the same question, Superintendent Sharmer has written, in quotation marks “No”?---Yes, I can see that. That is correct.

Did you have an independent memory of that question being asked during this interview?---Look, it would've been asked at the time. It's been that long ago I can't remember exactly, but yes, it would've been asked. It's a standard question that's asked of everyone. It would've been asked.

Reading your notes now it's tolerably plain, isn't it, that the question was asked and the answer was "No"?---Yes, that's correct.

I want to give you some information and if I can, I'd just ask you to listen to the information and then I'll ask you whether you knew about it back in 2016. We now know that while Constable Rolfe served in the ADF he was alleged to have committed a military offence of theft. We now know that he went through a military trial. We know that he pleaded guilty to a charge of theft. He was given a notice to show cause by the ADF as to why he shouldn't be terminated. He responded to the notice to show cause and instead of being terminated was put on 24 months' probation and when he later applied to join the SAS, the fact that he was on probation was the reason given by his superior officer for not approving his application. So that's information that we have. The first question I wanted to ask you was, did you know any of that back in 2016?---No, I did not.

Given that context, you would agree, wouldn't you, that Constable Rolfe's failure to disclose his military disciplinary history was a significant omission?---Hugely, yes.

He was asked a direct question in his written application and he said "No"?---Yes, that's right.

He again failed to disclose it in the personal history document?---That's right.

And he was asked a direct question at interview and he said "No"?---Yes, that's right.

You described the omission as "hugely significant". Do I take it from that answer that, had you discovered this omission before recommending Constable Rolfe, you would not have recommended him as suitable for recruitment?---No, I would never have recommended him and he would've gone to our Police Integrity Committee or further assessed.

Given each of the stages at which Constable Rolfe was given an opportunity to disclose this part of his history, the force would have interpreted the omission as being deliberate, wouldn't it?---Exactly, for sure.

And I take it that rarely, if ever, would the force recruit someone who had deliberately failed to provide information of this significance in an application?---Yes, it's a person's personal integrity if there're are issues before they join the job, what's it going to be like when they're in the job.

Trust is critical?---Absolutely.

Now, the reason the omission was not discovered - or one of them - is that the police force in 2016 didn't receive or only occasionally received the ADF personnel files, is that right?---Yes, that's correct.

Now, at par 14 of your statement you say, "I did not carry out any defence service history" due, in effect, to your past experience, which was that it was difficult to obtain information, it was provided kind of ad hoc, sometimes it was provided by applicants but wasn't certified. Can you recall what the policies were in 2016 regarding obtaining the ADF history?

We tried to get the report and as I said, it got to the stage where reports would get sent off and you wouldn't get anything back. Time lines for recruitment had passed and people were close to starting on day one in recruit training and no reports had been received.

Given those difficulties, what became the practice?---Most of the time they weren't done.

Over time did the force just stop asking for the ADF files?---Yes, I did. I stopped asking for them because I thought it was a futile part of the recruitment process. It was hard – sorry, it was hard to get a report back.

THE CORONER: We didn't get your answer on your knowledge of the policy at the time. What was the policy?---Yes. Yes, your Honour, there was a – there was a guide book and that was - it did stipulate sections and stages to be done, but I did not do it.

MR COLERIDGE: And just to clarify, requesting the ADF personnel file was one of the stages in that guide book?---Yes, it was.

Was there any discussion between yourself and other members of the Police Recruitment Team about that deviation from the guide book?---Look, I can't remember exact wording because it is a long time ago. It know it was mentioned in passing, all the difficulties that we had in trying to get a report back.

Now, has that guide book been updated since 2016?---I've never seen it since. It's outdated, it's not used.

THE CORONER: What is used?---We - we don't have a general order as such, but just going off what members have been doing over the years. We know the procedures and we know the stages but there's not actually anything written down.

MR COLERIDGE: Do you think that formalising the process for assessing applications and doing probity checks could be helpful for recruit officers?---Yes, absolutely, it would be good.

For example, if there's a really important reason why certain documents are to be requested, the general order might make it clear that, you know, however difficult it is to obtain the documents, you try to get the documents?---Yes, exactly, and what we do now is, in view of what's happened, no applicant will proceed to the challenge panel unless all those checks have been done.

Now, it sounds like then there's been some change in the procedure since 2016? ---Yes, there has, yes.

When did that change in the procedure occur?---It would be at least three years ago. Possibly more.

And has that change in procedure been recorded anywhere?---It probably has with the OIC of recruitment. It's not my duty to do that but it probably is somewhere. I know - I know - sorry?

No, no, you go?---There's a general order being formulated and I dare say it will – it does mention in that as well.

And just to clarify, Senior Sergeant Serge Bouma is the current OIC of the recruitment section?---Yes, that's correct.

In your experience are ADF personnel files now sought when - - -?---Yes, they are.

And is that sometimes, always?---Always from now on.

And what about the practical difficulties obtaining those documents from the ADF, has that issue changed?---It's haphazard. So sometimes you get what you seek in a timely fashion and sometimes you

don't?---That's correct. So if we don't receive in a timely fashion, those applicants are just in limbo until we get those details from the ADF.

Are you aware of whether there has been any attempt to negotiate in a memorandum of understanding between the force and the ADF?---I know the OIC Serge Bouma, when he took over, made phone calls to the people that do the checks and all that and we had contact, personal contact details and we can email them and get through all the paperwork and ring them if it's an urgent matter.

I want to ask you some questions now about one of the other potential failures to disclose in Constable Rolfe's application and this concerns the conduct that occurred in Queensland in around about 2011. You'll recall that we had a look at that box that had been checked no on the police application form?---Yes.

Now in the personal history document, I think you agreed that Constable Rolfe had in fact disclosed that he had had some involvement with the police in Queensland?---Yes.

So the first disclosure was on 16 March, on the morning of the interview?---Yes, that's correct.

Now that prompted some follow up questions at the interview, didn't it?---Yes, it would have.

For example, if you turn to question 25?---Yes, I have that.

You can see that there was a question about a physical fight or whether Constable Rolfe had ever been in a physical fight and Constable Rolfe told you something about a physical fight in Townsville when he was in the ADF as a soldier and he told you in effect something "beat up unconscious. I stepped in. Got booked. Fine. No issues".

THE CORONER: So I think it says, "Townsville ADF soldier getting beat up unconscious".

MR COLERIDGE: I apologise.

"Soldier getting beat up unconscious. I stepped in. Got booked. Fine. No issues at work"?---Yes, that's what I've written.

There's certainly nothing in your notes, is there, that suggests that you probed Constable Rolfe or asked Constable Rolfe why he hadn't disclosed that in his original application, is there?---No.

Given the significance of honesty and integrity to the application process, if you had asked him, look, why didn't you disclose this, you probably would have taken notes of that, is that right?---Yes, exactly.

So the absence of any note to that effect suggests that those questions weren't asked. Correct?---Correct.

Wasn't it important that Constable Rolfe be tested on whether he had any reasons for this late disclosure?---Sorry, what do you mean?

Given that you'd been told something at interview that he hadn't disclosed in the application form, do you agree that it was important for the panel to test him, to ask questions about why he hadn't?---Yep, to probe him as to why he hadn't disclosed. Yes.

He might have explained that he was confused by the application form and didn't think he had to disclose it?---I don't know whether that's correct.

I'm not saying that it's correct, I'm just saying that he might have given a range of different answers but you - - ?---He could have, yes.

And you just didn't know what he would say until you asked, did you?---Exactly.

Okay. Something else that you might have done was contact the Queensland Police Service and see if they had any records of his involvement with the police?---True.

And it was entirely possible that those records might have been inconsistent with the account that he was given?---Yes, exactly.

Do you think that in hindsight that was something that you probably should have done, given that he'd disclosed some involvement with the police?---Well the fact is that he's saying that he only got a fine. So it's been played down. I don't think, reflecting back now, it was the truth given to us, it was played down.

You used the expression played down. Are you saying that you accept that it was possible that what Constable Rolfe told you might not have been the truth?---Yes.

And until you sought those documents from the Queensland Police Service you couldn't have verified whether it was the truth?---That's exactly right. He's saying he just got an on the spot fine for a fight.

So I just want to clarify what your evidence is. Do you agree that in hindsight you probably should have checked with the Queensland Police Service to see whether Constable Rolfe's account was consistent with the account of attending police officers?---Look, I was going off what I was told. I was expecting the truth and I thought it was just a fine. I didn't pursue it.

THE CORONER: What would you do now if someone disclosed something like that at interview or in their personal history?---Yes. Your Honour, I would be looking at investigating it further to confirm or deny they're telling the truth.

MR COLERIDGE: Now the other thing that you were told in the personal history document, if you can go back to that at page 4, was that Constable Rolfe had applications pending with a number of other police forces?---Yes, that's correct.

Including Western Australia, Victoria and Queensland?---Yes, that's correct.

And that was as at 16 March?---Yes, that's right.

Are you aware now that in fact by 16 March Constable Rolfe's application to the Queensland Police Service had been rejected?---I hadn't been told officially, I've just received information. But yes, that's what's occurred.

Well take it from me that that's what occurred and that the reason given by the Queensland Police Service was that Constable Rolfe had committed an integrity breach by failing to disclose that same public order offence and was disqualified from applying to the Queensland Police Force for ten years?---Right.

Now - - -?---Yes.

I'm not suggesting that you knew any of that back in 2016 but if you had known, would that information have been relevant to the decision you made about recommending Constable Rolfe?---Yes, indeed it would.

In hindsight do you think it's important that when an applicant discloses that they have applications pending with other police forces that there be some level of communication between the Territory Police Force and those other police forces?---I think we'd have to look at how far their application process has gone. You know, we get a lot of people that apply for a lot of police services and the NT is one. So, generally we only conduct checks on ex-police. People that have put in applications, I mean, no. I – I wouldn't do a check on that.

Okay?---Because I don't know how far their application's gone to start with. They could have just put in the application yesterday.

Isn't that exactly the problem though? You don't know how far their application's gone. And this case demonstrates, an applicant was able to say that they had a pending application, when in fact their application had been rejected, and they'd been disqualified from applying further?---Mm mm. Yes, that's true. But it all boils down to truthfulness and honesty. He was given the opportunity to disclose that he had been disqualified, or rejected by them, for a period of exclusion. And he should have honestly disclosed that.

Given that the most important thing for you to assess, during the interview process, is honesty and integrity?---Mm mm.

Don't you think the onus is on the police force to independently assess honesty, rather than simply rely on self-report?---Yes. But how far do we go? You know, he

could have applied to all other – not other jurisdictions, but other kind of careers, would we also check with them?

It's about resourcing?---Yes, exactly.

No further questions, your Honour.

THE CORONER: Yes.

Any other questions?

MR BOULTEN SC: I have some.

THE CORONER: Thank you, Mr Boulten.

MR BOULTEN: Is it okay if I sit down too, your Honour?

THE CORONER: Yes.

XXN BY MR BOULTEN:

MR BOULTEN: Senior Constable, my name is Boulten. I'm a barrister appearing for NAAJA. You understand what NAAJA is?---Yes I do.

That's good, okay. I'm just wondering whether any Aboriginal police, or other public servant, ever sits on recruitment interviews in the Northern Territory?---Yes they do.

How often does that happen?---It depends, if we've got the man power. Over the years, we have had – if we are targeting Aboriginal Community Police, I've sat on panels with Indigenous members in the job, and they've held reside over the recruitment process.

What about sworn police? Just ordinary police?---Yes, we've had that as well.

How often?---When we can get the man power. It just depends. Because we – if we have other Indigenous officers helping us, we have to get them from other sections.

Now it sounds like it's not very common, from your evidence?---It's not that common, but it does occur.

Okay. What about females? How common is it for there to be a woman on a panel?---Very common.

Is there not supposed to be a woman on every panel?---Over the years it has been gender balanced. But with resourcing, it depends if we can do that at the time. Sometimes there isn't that availability.

Do you think that the structured interview process has enough questions, that would give you a complete view, a good view, of whether an applicant would be able to work with Aboriginal communities, and/or Aboriginal police colleagues?---I think it does. But it also depends on the type of person and their makeup. But look, when we interview, we try and look for any pitfalls in their comments or the way they answer to see if they've got any biases against certain people.

Now, we noticed in the particular interview that was conducted with Mr Rolfe, that when it came time to pick a couple of scenarios to test his ethics and his life choices, there were scenarios that involved dealings with Aboriginal people, including Aboriginal people in remote communities. But he was not asked those. Do you think that it would be a good step, to ask every applicant, a hypothetical, that deals with their ability to work with Aboriginal people?---Yes, that could be – that could be changed.

Of course, ultimately, as you say, if someone wants to lie about their views, it's an easy thing to do isn't it?---That's correct.

That's all I wish to ask, your Honour.

THE CORONER: Yes.

Yes, Ms Morreau.

MS MORREAU: Thank you, your Honour, I only have a couple of questions.

XXN BY MS MORREAU:

MS MORREAU: Constable Agnew, my name's Paula Morreau, I act for the Brown family, family of Kumanjaya Walker. And I only have a couple of questions for you. Firstly, do we take it that the guide book that you referred to in relation to probity checks that are done, did not require checking of criminal histories in other states, or in the Northern Territory, at the time?---No, no, criminal history checks are done.

I see?---Yes.

And – and that's routinely done by the Northern Territory Police Force, and there's no, for instance, obligation on an applicant to obtain their own criminal histories for the application process?---No, we do all checks on – on everyone.

Thank you. And do we also take it from your answers a moment ago, under questions from Mr Coleridge, that there is still no formal guideline or policy, in relation to the extent of the probity checks that you undertake?---I understand that it's in – it's a work in progress.

I see. So the answer is no, not currently, but there should be in the future?---It's being formulated.

And are you a party to those motions?---I'm – I have been, but I haven't been of late.

Thank you. And finally, the references that a person puts up and the reference checks that occur, how significant is that to the application process?---Very important. It – we ask the people for current employer - - -

Yes?---So we can get an idea – get a referee report from them.

Yes?---And we also – we have – so your current employee, and then a second person, as a former employer, and a character reference.

Yes, and you're aware in this case of course, that Mr Rolfe gave you three referees. One being a current employer, one being his – a former supervisor in the ADF, and the other being a family friend?---Yes, I'm – I believe so.

I see. Would you anticipate that a current employer would be someone who can provide important information of an independent kind, as to their – the applicant's work capacity in their current employment?---Yes I would.

And in fact, it's quite a lengthy conversation that occurs with the referee, particularly the current employer, correct?---Yes, that's correct.

Would it surprise you, that the current employer reference, was a woman, Ms Corinne Smith(?), who worked as a practice manager, in the firm that Mr Rolfe worked in, where his mother was the partner – a partner of the law firm?---I've since been told this, and if I was doing the report, I would say it would be a conflict of interest. And I'd seek other referees.

If you had known that at the time?---Yes, I didn't do the referee report.

Thank you. Is there any – as a result of coming – this information coming to your knowledge, is there now any part of the process that ensures that a current employer – reference, is an independent one?---Yeah, that's always been practice.

Was it just omitted in this circumstance do you think?---It could have been. I wasn't present for it. I couldn't comment on it.

Thank you.

Thank you, your Honour.

THE CORONER: Any other questions?

Yes, Mr Officer.

XXN BY MR OFFICER:

MR OFFICER: Senior constable, my name is Luke Officer. I act for Constable Rolfe. Can you hear me?---Yes, I can.

Earlier in your evidence to counsel assisting you indicated that you didn't do referee checks and that there would have been probity checks. Did you conduct the probity checks yourself?---No, that's done by out intelligence section.

Right. And it's true, isn't it, that when a potential applicant puts their application in, they need to sign a consent and authority to undertake such probity checks, don't they?---That's correct.

And that you'll find it as page 49 of the application bundle. Have you got that before you?---I'll just have a look, if you stand by. Sorry, I've just got to find it.

Senior Constable, we'll put a copy of it on the screen if that assists?---Yes, it would. Thank you.

THE CORONER: Is it part of this document or is it a separate document?

MR OFFICER: It's in my – it's behind his statement. It's page 49 right at the bottom which seems to me to be part of the entire bundle.

THE CORONER: Maybe at the bottom of that, if you scroll through that application to the bottom we'll see if it's attached to that document.

MR OFFICER: It doesn't matter. I can do it another way.

Senior constable, don't worry. But you're familiar with that form, that consent form?---Yes, I am, yes.

And it says, "To determine my merit for appointment I hereby consent and authorise the Northern Territory Police Force to undertake background enquiries with police services and other agencies, both state and Federal in connection with the determination of my merit for appointment, including my integrity and good conduct. And further consent and authorise such police services and other agencies as required to uplift all information that may directly or indirectly relate to me and release and deliver such information to the Northern Territory Police Force". That's but one paragraph in a number of consent paragraphs. Are you familiar with that paragraph?---Yes, I am.

And you accept from me that Constable Rolfe signed that form or that consent form on 3 February 2016 as part of his application?---Yes, I do.

What happens if a prospective applicant does not sign that consent form?---The application in its entirety when it's first received is vetted to make sure everything is correct, appropriate paperwork is attached. It would have been – contact would have been made to the applicant and said why hasn't it been signed. It more than

likely would have been scanned, emailed back to him or – for a signature or the whole application would have been rejected and sent back as well.

So is the effect of your evidence if a prospective applicant just did not sign that consent form the application wouldn't advance?---That's correct.

Are you aware – you were asked some questions by Ms Morreau about character references and a particular person, Corrine Smith who you said in your evidence would be a perceived conflict of interest?---Yes.

You're aware there's two other character references that Constable Rolfe included in his form?---Yes.

Who – one is a public servant with DFAT and another one Infantry Soldier, the section command which looks like within the military?---Yes, I believe so.

Are you aware if those referees were contacted?---No, I – I was in hospital. I had no knowledge of it.

But nonetheless there are a number of referees that could have been contacted, not just Ms Smith?---Yes, that's correct.

Nothing further, your Honour.

THE CORONER: Yes.

XXN BY MS BURNNARD:

MS BURNNARD: If there's nobody else, your Honour - - -

THE CORONER: Yes, Ms Burnnard.

MS BURNNARD: - - - I have just one matter.

Good morning, senior constable Agnew. Can you see and hear me okay?---Yes, I can. Good morning.

Good morning. I just want to clarify one matter with respect to the probity check if I may?---Yes.

To the best of your knowledge and understanding probity checks were conducted in this matter, is that right?---I believe so.

That means the Northern Territory Police Force did do or caused to have done a national police check?---Yes, I believe there's a certificate attached.

And it's the case then that the Queensland infringement simply did not show up on that national police check document?---That's correct.

Thank you, your Honour. Those are the matters.

REXN BY MR COLERIDGE:

MR COLERIDGE: Just one question in reply, your Honour.

THE CORONER: Yes?

MR COLERIDGE: In 2016 the police checks that the Northern Territory Police Force did, didn't seek infringement notice outcomes, did they?---I don't do the checks. It depends, I suppose, if it was recorded on the national system or it was regarded as an infringement. So some jurisdictions don't put infringements on there if they've been paid.

Are you aware that under the Northern Territory Police Force's current policies infringement penalty outcomes are now sought?---I'm not sure. I could – no.

No, that's fine. Thank you.

THE CORONER: Yes, thank you very much for making yourself available to explain the process. And we appreciate the evidence and time that you've given. Thank you. We'll break the link?---Thank you, your Honour.

WITNESS WITHDREW

THE CORONER: Dr Dwyer.

DR DWYER: Your Honour, that is the first day of this whole inquest that we have managed to finish early. Characteristically finishing about 5.30 I think. So that is helpful because no doubt the rest of us at the Bar-table aren't going to stop work for the day. But might I ask for a short break?

THE CORONER: Sure.

DR DWYER: What we do need to deal with is a couple of housekeeping matters, if I might describe them broadly like that, so that things run smoothly when we return.

THE CORONER: Yes.

DR DWYER: Because we then have a week off and as your Honour knows are returning the week after with a plan to visit to Yuendumu for two days and then Constable Rolfe is scheduled to give evidence.

THE CORONER: So we're not, just to be very clear for the link, we're not sitting at all next week?

DR DWYER: That's the case, your Honour.

THE CORONER: We are recommencing on 14 November at this stage the plan is for Yuendumu.

DR DWYER: Yes.

THE CORONER: 15 November is also planned for Yuendumu and we'll be recommencing with the livestreaming on 16 November at 9.30 am.

DR DWYER: Yes, your Honour. And then two things that we could very easily do today. I think my learned friend, Mr McMahon, Senior Counsel, put on the record some of the plans for Yuendumu. And then secondly, there is the issue of the interim non-publication order that was granted earlier in the week to be revisited.

Your Honour has to give that full consideration. It would be timely, in my respectful submission, to do it now or at least after a short break.

THE CORONER: All right. Well we'll take the morning tea adjournment. We'll be back in about, I don't know, 20 minutes or so.

DR DWYER: Thank you, your Honour.

THE CORONER: We'll continue livestreaming the proceedings today but at the close of business today the livestreaming will recommence at 9.30 on 16 November.

DR DWYER: May it please the court.

ADJOURNED

RESUMED

MR OFFICER: Your Honour, I think I am first.

THE CORONER: Yes, Mr Officer.

MR OFFICER: I have indicated to counsel assisting that my instructions are to press the application a non-publication order over the individual (inaudible) of that text message. What I have canvassed and propose to do is provide the court and the parties with an affidavit by next Tuesday and if needs be supplement it with a written submission for all the parties to consider and they can, in turn, have their two cents worth if needs be and then your Honour can proceed to make an in Chambers order throughout the course of next week or if needs be when the court resumes. But I intend to obtain an affidavit (inaudible), affidavit gives further force to the needs for the non-publication order in courts at s 43 and I would seek the order be made, if not then it falls away.

THE CORONER: Yes.

DR DWYER: I don't to be heard against that, your Honour.

THE CORONER: Yes, all right. So any further submissions and an affidavit in support from Mr Rolfe or on behalf of Constable Rolfe in relation to the non-publication order of the recipient of a message - text message or attachment to be filed and served by midday on 8 November. That will, I think, then be made available to the other parties and any further submissions - if any - from any other party to be filed and served by midday 10 November.

MR OFFICER: Thank you, your Honour.

DR DWYER: Thank you, your Honour. Your Honour, then I come now to our planned visit to Yuendumu.

THE CORONER: Yes.

DR DWYER: We've received a list so far of a number of parties who are wishing to attend. They include of course all of those at the Bar table so far other than the representatives of Constable Rolfe who, as I understand it, may well be coming. I just asked my learned friend if they might indicate, just particularly for numbers of - sorry, I think Mr McMahan might have some information about that.

THE CORONER: All right, well we will hear from you first, Mr McMahan about what the proposed arrangements are and then we will see if there are any - if we need to make any further arrangements.

MR MCMAHON AC SC: Yes. Ms Dwyer thought we were having an early day, your Honour, but since there are no pressing reasons I can speak for a few minutes if I may?

THE CORONER: Absolutely. We are all keen to hear from you, Mr McMahon.

MR MCMAHON: What I thought I might do, your Honour, if I may take perhaps four or five minutes just put the visit in - make it clear (inaudible) to anyone who is listening who is not in court as well.

THE CORONER: Yes, thank you.

MR MCMAHON: As everyone here knows, at the beginning of the inquest there were a number of people from Yuendumu who spoke, including Robin Japanangka Granites and he said that the people from Yuendumu needed to be part of the outcomes for change to happen and in speaking to this court, your Honour, he specifically invited your Honour and the court to come out to Yuendumu and since that day a lot of people have actually been working to make that hoped visit a reality and it looks like it is now a reality and a lot of work has happened to make this invitation come to fruit.

So the Parumpurru Committee is inviting your Honour and everybody here, all of your Honour's staff and all the parties at the bar table, to come to Yuendumu, all the lawyers and the visit will have several purposes. Perhaps the most important purpose is to allow their community to speak to your Honour, as was foreshadowed on that very first day and so that your Honour can hear the voice of the community in a way which is not normally done and not normally possible in a court proceeding and it is the hope of the community that through the events that they have planned for your Honour and all of us to share their voice about all the matters that - well, at least some of the matters that have led into this inquest.

THE CORONER: Normally we expect people to come into this very formal environment which must be extremely foreign and intimidating to most people who haven't been to court before and it will be a very different opportunity for people to speak on their own country.

MR MCMAHON: It will be, your Honour and I can say from some experience that a number of the people that might have been coming to this court as witnesses have found it a very challenging idea to come. We will have some witnesses from Yuendumu coming later in the inquest, but less than we'd hoped because of what your Honour has just said.

So it is going to be essentially a listening experience. All of the events which I am going to outline in a moment have been planned by the community of Yuendumu, not by us. It has been planned by Yuendumu especially for your Honour and the people of Yuendumu. The idea is not that we, as lawyers from the parties, come and ask questions because, as I have been told, a lot of questions are being asked. The idea is that we come and listen and that the community have a chance to sit with your Honour and ask your Honour to listen to what they have to say about Warlpiri culture and Warlpiri law and so on.

There is also an aspect, which is a legal aspect, which as in any inquest, it is quite common for the Coroner to conduct a view. And this inquest has seen a lot of footage of Yuendumu and various parts of Yuendumu and heard about numerous places within Yuendumu that we haven't seen much footage of. So it's expected, as is normal in an inquest, that your Honour would – may wish to conduct a view of some of the buildings that have been mentioned repeatedly and that's back into the timetable as well.

And of course, as in any inquest it would be normal for all of the lawyers, at least to make a decision about whether to accompany your Honour on such a view, or whether they needed to or not. So we think that will just unfold in the normal way. And of course, since we're going to be there and since your Honour's going to be there, that's the best time to conduct a view, given the distances involved and the time limits on us all.

So if your Honour will permit me I'll just run through very briefly an outline of the schedule over the two days so that your Honour and your Honour's staff and also all of the lawyers present have an understanding of what's planned. The commencement will be at 10 am on Monday the 14th.

THE CORONER: We do have a document as well, I think, which speaks to this. Are you happy for that to go up on the screen or not?

MR MCMAHON: Probably not, your Honour. It's still a draft document.

THE CORONER: Okay, that's fine. Sure.

MR MCMAHON: And I'm not certain that it's finalised.

THE CORONER: Sure.

MR MCMAHON: So I'll just briefly run through it, which will objectively be the substantive matters in that draft.

THE CORONER: Thank you.

MR MCMAHON: The visit will commence on Monday the 14th at 10 am where your Honour will be welcomed by the Yuendumu Cultural Authority. And I've been told just to remind everyone there's – 10 am doesn't mean that being there very early will be very helpful. It would be more helpful if people arrived just before 10 am because things will be then set up and so on.

And your Honour will then be welcomed just near House – what's called the Memory House, which is House 511. And your Honour will then be asked to – will be taken to a place near House 511 and then walked over to House 511 by some Elders, both men and women. And then there will be a welcome to your Honour. And it's anticipated all the lawyers will be essentially walking nearby, your Honour

and part of all of that. And there will be I think maybe two welcomes to your Honour, as far as I can see at the moment.

And once that's done there may be some discussion with your Honour about Kumanjayi's passing from a spiritual perspective and how that is understood in Walpiri culture. And then your Honour would be walked over to the basketball court where there would be a community meeting. That meeting is what is locally known as a truth telling meeting. And there'll be seating for everyone of course. That will be at the WYDAC basketball court. And there'll be a couple of MC's who will be community Elders.

And then there'll be a video shown, which I haven't seen but it's actually, as I understand it, it's the video which shows the journey of the community over the last few years since November 2019. There will be a number of shorter speeches by some Elders, some of whom have been in this court, which will be about Walpiri culture and Warlpiri law and history.

Some of the matters in the history such as the Coniston Massacre which had come up in the court, will probably be talked about then at that time as well. Then the – the media will then be asked to leave so that there can be a truth telling event where the community can talk to your Honour, which will be passing a microphone around and people will say what's on their mind. So that's relatively structured in terms of who will be speaking about issues that are on the mind of the people who come to the meeting.

We anticipate a significant turnout of community. And I know from what I've been told that other community meetings of this kind that I should not try to predict how long that meeting will go for. It might go for quite a while. And there will be some clear protocols set out as to how people are to manage what they say and how that is to work. And people in this court know the Elder of course who's our much appreciated interpreter of the court and she'll be there interpreting for your Honour for the truth telling meeting.

There may be some dance or something like that at the end of that truth telling meeting. And then there'll be a community barbecue facilitated by WYDAC. That will be the end of that day. The second day – and this is particularly of interest to – if anyone is short on time, at the time of these events – in the morning at about 8.30 we had scheduled in – what's been scheduled in is your Honour's opportunity to go on a view of places that you might not already have seen by that time. And possibly there might be – it might be suitable for your Honour to be just driven around and have a general orientation of the rest of Yuendumu, if you haven't seen it. Of course it's not very big. Once you're there you're just going to see most of it quite quickly.

But places perhaps like the medical centre or the WYDAC building or the nurses' quarters, those kinds of places which no doubt all of the parties will be perhaps in contact with your Honour's staff about which places you might like to see while you're there.

THE CORONER: Thank you.

MR MCMAHON: And obviously the lawyers will make out their own way about accompanying your Honour on that. And I see that really is the only time of the entire event over the two days which is more of a formal legalistic nature which is of course the norm in an inquest.

I don't anticipate generally anything being – that's spoken about outside in the other events I've described really as being the subject of recording or evidence or any such matters. It's of a different nature. It is unique. That's why of course it's appropriate and proper that everyone here is invited and is able to attend and it's a genuine invitation extended to all the lawyers here and I encourage them to come if they wish to accompany your Honour on any part of the entire two days.

Once your Honour has done that view, let's assume it takes your Honour an hour, an hour and a half or something like that to view the places you wish to view, then given families will accompany your Honour to different parts of Yuendumu which have been prominent in the inquest, a number of different houses, the airport, probably the police station, just – and various family members will probably walk with your Honour and talk to your Honour about what the place means to them in the context of the history since November 2019.

And of course once again, everyone else will be accompanying your Honour. But I expect that to be an opportunity particularly for individuals most closely connected to these events just to be able to talk to your Honour. And finally, the last event is what's called a yarning circle on Tuesday which is where the committee, the Parumpurru Committee and peers of Kumanjayi Walker, so younger people, will sit in a circle, I anticipate, where the Elders and the younger people will talk to your Honour about a whole range of issues to do with Warlpiri culture.

It's not a defined list of issues but we hope that it will include some of the issues that have been raised in the committal by different witnesses, either briefly or to some larger extent things like the nature of the grieving and sorry business and perhaps other aspects of Warlpiri justice which have come up and Warlpiri culture.

So it's probably obvious as I have now spoken, your Honour, that I can't give you the sort of strict schedule of events and topics that might be expected if I was about to walk into a court with very strict protocols. What I can say is there a great deal of effort has gone into this by the Elders and community members to make it a successful visit. Things might go slightly unexpectedly in some conversations or whatever, but I appreciate the goodwill in the court for this to be a valuable experience for everybody and particularly for the court to get a sense of Yuendumu and we'll just have to go with the flow.

It's probably an appropriate moment, just to make the comment that we all know in this room, that it's been a very difficult case for everybody in this court, and for the people who are watching on the stream, whether they're from Yuendumu or

elsewhere, and so we're hoping that this will be an opportunity to have a different kind of experience, and a valuable experience for all involved.

And that's probably all I need to say, your Honour. And just hope it goes well. And once this court adjourns, I understand that the next time we'll convene will be at 10 am, nearby House 511, on Monday the 14th.

THE CORONER: Yes. It is an incredibly generous invitation that has been offered. It is a gracious invitation. And I take it very much to heart, that we are being welcomed into Yuendumu. At the end of this process, however painful the process is, we do hope that we have a sense of hope, and I am very pleased to be able to come to the community, to listen to the hurt and the pain, but also, the plans for the future. And I will very gratefully accept the kind invitation that's been offered.

MR MCMAHON: Thank you, your Honour. And I should just confirm that I think I've spoken to all the parties – had spoken to all the parties. They're all instructed to attend. They're all welcome. And they're all going to attend, as I understand. So that will have significance and value to the whole event.

THE CORONER: Yes.

Does anyone wish to say anything further at this stage?

Then we will adjourn, and reconvene at 10 o'clock on 14 November, in Yuendumu.

ADJOURNED