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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 28 NOVEMBER 2024

(Continued from 27/11/2024)

Transcribed by:
EPIQ

THE CORONER: Continuing with submissions. I think we are hearing from Ms McNally, is that correct?

MS MCNALLY: Yes, thank you, Coroner.

THE CORONER: It's a different name coming up on your screen, so it just left me a little bit perplexed but thank you. Ms McNally, thanks for making yourself available over the link.

MS MCNALLY: Thank you for making it available, Coroner.

McNally for Sergeant Bauwens. We refer and adopt our submissions of 11 November 2024.

The Coroner's powers under the Act are dealt with at pars 13 to 32 of our submissions. We expand in those why the way forward urged upon you by your counsel is wrong and would lead you into jurisdictional error.

In relation to the submissions followed by the families it is clear that they want the truth. That they want to avoid another death and despite past experiences, they have placed their faith and their hope in this Coronial process.

If we are right on scope then the effect on families who have put their faith in this process will be great, and that is the real world consequences if a court does go beyond scope.

The scope issue was dealt with, the scope and what we say were improperly obtained text messages, was dealt with extensively by Mr Officer yesterday. I adopt those oral submissions.

For the purpose of my submissions today, the focus will be on the issue of resourcing, first of the court and in interested parties. This in turn impacts the fulsomeness of the evidence before the court and the quality, that is. its ability to be relied upon and to make findings, recommendations and comment, and also issues of natural justice and procedural fairness.

As discussed in the Doomadgee case, resources are finite and the public interest often will be better served by the expeditious and economical dispatch of business than by the undiscriminating pursuit of evidence which the Tribunal regards as having a very reasonable likelihood of influencing the outcome of the hearing.

If our submissions are correct, we would say it's worse than that and it has gone beyond the actual ambit of the Act. It is likewise important for the parties who may be subject to adverse findings and comment or recommendations to be in a position to fully participate in the Coronial process, to test propositions and to test evidence. To fully participate in this Coronial process would mean being in a position to consider the vast evidence this Coronial has considered or had available to it including a large group of evidence, nearly 70 days of hearings held in tranches,

over 5,000 pages of transcripts and many written submissions with some exceeding 400 pages. Lawyers are not cheap. Many people at the Bar table will have incurred expenses of hundreds of thousands or millions of dollars including flights from Melbourne and Sydney.

This is the level of funding that each participant in this Coronial should have had if there was ever to be an ability for interested parties to fully participate in this Coronial process. The consequences of this not happening is that there is evidence, we say - and I will enlarge on this later - that is incomplete and often not tested and this really goes to the truth that the parties and the families are seeking.

Further, the lack of ability to fully participate has, on occasion, been used as a basis not to allow evidence or comment in from particular parties. It has been put to my client, “Well, you were represented at this Coronial”. We say our client was not represented at the entire Coronial. Our client was represented at approximately seven percent of the Coronial.

Your counsel’s written submissions are not in an orthodox form. I did my best in my written submissions, to unpick the allegations against my client and the evidence said to support it and I have summarised these into what I call, “the four issues.”

Issue 2 and 3 are in relation to allegations that my client condoned or encouraged certain behaviour. Your counsel has attempted to knit this allegation together by Ms Campagnaro’s evidence, which was that she was told by Mr Rolfe that our client had fixed up jobs for Mr Rolfe and she was aware that our client freely used racist language.

At transcript 2762 to 2763, Ms Campagnaro says that she was told by Mr Rolfe that, “Lee Bauwens and another officer had, on several occasions, dealt with his reports and unjustified use of forces for him.” She was then asked for her impression of what that meant. Now, I pause to note the difference in treatment where a witness has been asked for her impression of what words meant but other witnesses were stopped from providing comment, for example, on the 5 am plan.

Counsel assisting did give my client an opportunity to comment on Ms Campagnaro’s evidence which was read out to him. Now, counsel assisting had to read it out to him as my client did not have the resources to have his legal team attend when the original evidence was given.

Despite that, my client’s evidence was very clear. He said - and this is at transcript 4964:

> "Zach was never on my patrol group, so I never had an opportunity to do use of force or saw him on patrol group. I don’t believe I did any use of force for IRT deployments, because our use of forces were basically non-existent. So unless my name is on a use of force that you can present to me and I can comment on, I’d say it’s completely untrue."

Now, as far as I am aware, the coroner's - or counsel assisting did not then take the natural next step and call for these alleged use of force documents.
Ms Campagnaro also says that she heard our client freely use racist terms. The question was put to Ms Campagnaro by counsel assisting:

> "Is he a sergeant who, in your memory, in your mind and in your memory, was freely using these kinds of racist terms?"

And the answer was, "Yes, yes, he was."

"Freely" means in generous or copious amounts. As far as I'm aware, did counsel ask her particulars of these alleged instances? No.

> "Do you know when, where, how often these allegedly happened?---No."

> "Once a day, once a week, once a fortnight?---I don't know."

It was indeed fortunate that, with our limited resources, we were able to attend some hearing days in October 2022 and obtain evidence from seven witnesses on oath that they had never heard our client use such language and their surprise in relation to the text messages.

And these were Constable Eberl, Constable First Class Anthony Hawkings, Constable James Kirstenfeldt, Officer Donaldson, Sergeant McCormack who went on and said that Sergeant Bauwens is probably the best sergeant he's ever had, Sergeant Evan Kelly and Superintendent Nobbs.

And it was indeed fortunate that we put these questions to the witnesses, because based on opening submissions, they gave no hint that particular officers would be subject to potential adverse findings, comments or recommendation. We're not sure what has changed since opening submissions were made.

The weight of the evidence before the Inquest is that Sergeant Bauwens is a dedicated and experienced officer and leader. In October 2014, Sergeant Bauwens left the TRG to move to frontline duties in Alice Springs. He attempted to make efforts to improve quality of police services in Alice Springs, including by forming the IRT and making efforts to increase training and resources for these police officers.

So we now have a situation where we have evidence from Ms Campagnaro regarding use of force where there are no details, and that she heard my client freely make racist comments. So what is the court supposed to make of this? The coroner is in a difficult position, given the evidence before you.

Your counsels' submissions go into detail about where Ms Campagnaro's evidence can be accepted as truthful. And then there is another bucket, and that's where they don't want you to make any findings, and why? Well, it's explained because of the complexity of the issue.

Now, I'm not sure what that actually means. We say that it is not appropriate for you to cherry pick what parts of a witness' evidence to accept, and then not make any findings on the rest of it. It is trite to observe that if a witness gives false evidence, that is relevant to the weighing up and balancing of the truthfulness of the rest.

We submit that you must make a finding on all of Ms Campagnaro's evidence, and we say that on the evidence before you, that must include a finding that the evidence in relation to my client was not true. It is an unusual situation where findings of truthfulness must be made at a coronial. But that is the consequence that flows from the position taken on scope.

Counsel assisting says:

> "The decision to disband the IRT was a wise one. Now that is because, allegedly, the IRT no longer exist, you are entitled to assume that there was never a need for it."

This is a naïve observation which disregards the evidence before you.

The evidence was given by my client, including in his statements, that there is a need for it, a properly resourced IRT-style group. The fact it was not explored is a significant blind spot in this coronial and would impact the family's ability to come to the truth.

There was no evidence, except from my client, as far as I am aware. The finding urged upon you by counsel is contrary to the evidence as well as to contrary to common sense for reasons which I'll explore. The evidence before the court is that, years before the death, my client begged for training and for resources.

What was not explored was, why was this training and resources not forthcoming. Evidence of these requests are in my client's 2020 statement, which is in the brief at 707. And I have set up memos at par 65 of my submissions. These were memos prepared years before Mr Walker's death.

As far as I am aware, it's not been explored in any meaningful way why the requests were not acted upon and ignored. If the scope of this coronial is as broad as counsel assisting says it is, surely this would have been a fundamental plank of the investigation.

In relation to the IRT generally, we're not aware that this court has sought comment from any remote communities in relation to their experience with the IRT which, from the evidence before you, is that it was very positive. The court has not explored why less lethal beanbag guns introduced by my client were removed. The absence of these inquiries is inexplicable to us.

My client gave real life examples in his statements which are from 2020 and the examples are given in relation to periods before the IRT was disbanded and after the

IRT was disbanded. As far as I'm aware, no questions were asked about this real life examples.

For example, in one of the statements, in 2016, Pande Veleski killed a French national in an unprovoked attack with no warning. The IRT were called out at 10:30 pm and deployed to Ti Tree. Veleski was found naked and distressed and given medical treatment.

The specialist section from Darwin arrived 14 hours later. By that time, it is open and it is my client's view, that Mr Veleski may have died from heatstroke and other people may have been injured or killed during that 14 hour period, for the April and May 2016 riots at Ali Curung.

Now, compare these examples to a 2022 example, which is also given in my client's statement. In 2022, there was a victim of a domestic violent attack. The victim was in Ti Tree some 119 kilometres north of Alice Springs, whose car was shot at. Now, his safety was secured 14 hours later, after a 000 call.

For someone living in a remote community outside Alice Springs who is in imminent danger, what do they do now the IRT does not exist and it would take 14 hours for the TRG to arrive. These issues have simply not been explored. The only evidence before the court is my client's evidence that the disbanding of the IRT will result in deaths.

If we are wrong on scope and if you are able to make recommendations that have been urged upon you, we seek a recommendation that the Northern Territory Police Force undertake a review in relation to the need, structure and cost of a properly resourced tactical response group based in Alice Springs that is created in conjunction with Aboriginal groups, and that funding and resources is what my client has been seeking for many, many years.

In relation to the plan, there is - you know, that we have given, and some we've tried to give evidence or comment in relation to the 5 am plan. Now, rather than allow all - take the usual approach and allow this evidence in and then decide it's way to be in, in some instances the court has not allowed certain evidence or comment in. There are two examples. Ken Joy(?) provided a statutory declaration on 20 May 2024 and certain paragraphs, 105 to 121, were not allowed in and the explanation was this.

It is primarily Mr Joy's opinions which are given when he does not have privilege to oral or even notes to the evidence received at this inquest, in particular concerning events of 9 November. Mr Joy was not a serving member of the Police Force and has not been for some years, nor was he present. By contrast, I have ample evidence from persons present and from others who have direct knowledge of the events, all of whom have provided timely statements, who were available for examination in a way that provided procedural fairness to all.

It may be that you would have, in the end, given this evidence very little weight for the reasons which I've just read out, but to not accept the evidence or the opinion of someone who has come to the court to try and give it who has experience in the area, we say will result impacts important information being missed.

On 27 May this year our client attempted to give further evidence in relation to the 5 am plan. That is at transcript 5648. This was refused and it was said:

> "You are being represented in these proceedings, Sergeant, and we have received evidence widely from many, many different people and I will not be receiving any evidence further on this point from the witness box in the circumstances where I have had direct evidence from many different people within the Police Force, directly those on the ground and also other higher-ranking people who have provided opinion on this."

Sergeant Bauwens is an experienced police officer. Number 1, he has lawyers. Our client has not been represented in this coronial. He has been represented at 7 per cent of this coronial. Number 2, it is said that he does not have all the information that the Coroner's Court has.

It is true that Sergeant Bauwens was unable to personally participate in this coronial. At its heart our client's impecuniosity has resulted in some of, what we say, the most relevant information or comment not being before the court and evidence - and we say evidence which counsel wants you to rely on, is incomplete and untested. That is why the scope of Coronials are not as broad as your counsel urges. There may have been, and there probably are vehicles by which these issues could be explored but the Coroner's Court and the Act does not, we say, give you that power and it is not fit for purpose and the result is that the findings, if they are made, will be based on incomplete evidence and beyond power, your Honour.

And they're my submissions. Thank you, Coroner.

THE CORONER: Thank you very much, Ms McNally. Are you staying on the link or are you following us on the livestream or - - -

MS MCNALLY: If we can stay on the link, but I will turn my camera off and microphone off.

THE CORONER: Thank you.

MS MCNALLY: Thank you.

THE CORONER: Yes, let me have a look at our list.

DR DWYER: McCarthy, your Honour.

MR MCCARTHY: Good morning, your Honour.

THE CORONER: Good morning, Mr McCarthy.

MR MCCARTHY: My name is Michael McCarthy and I'm responsible for making submissions on behalf of the teams that made up the former Department of Territory Families, Housing and Communities. I do so having consulted with the relevant teams that now sit within a number of other departments including the Department of Housing, Local Government and Community Development, the Department of Children and Families, the Department of People, Sport and Culture and the Department of Corrections.

At the outset, I'd like to express my condolences to the family and friends of Kumanjayi Walker on behalf of all of the staff of the former department. I have spoken to staff who had involvement with Kumanjayi Walker and all are saddened talking of his loss. It is clear that based on my discussions with them and my engagement with this matter that Kumanjayi Walker was a strong young man who had a spark about him and who had an incredible connection with his family and with Yuendumu. The loss of Kumanjayi is significant.

On behalf of the staff of the former department I also want to acknowledge that there is more work to be in all aspects of service delivery particularly in remote communities including in remote housing, child protection and family support, domestic and families and youth justice.

The Coroner has heard extensive evidence in this inquest about the reforms the department is undertaking to improve its services and, more importantly, to improve the lives of the people that it serves. That work continues today and the department welcomes the lessons from this inquest as part of that work.

The former department had a unique understanding of Kumanjayi given the number of its staff that had engaged with him. In reviewing Kumanjayi's case there are examples of good practice and there are aspects of service delivery that have been identified as requiring improvement. We submit that the findings of the Coroner should recognise both.

With respect to child protection, Kumanjayi first came to the attention of the department in his early infancy in circumstances where Kumanjayi's mother and father were unable to care for him. The department facilitated family meetings to work with the family to identify an alternative carer. Ms Leanne Oldfield volunteered to care for Kumanjayi. This led to a good outcome for Kumanjayi. It kept him with family and it kept him in Yuendumu both of which were extremely important to him.

Some of the submissions suggest that Kumanjayi was brought into care. This is not correct. Kumanjayi remained in the care of his family throughout his life. The records of the department suggest that Ms Oldfield cared for Kumanjayi very much and raised him in difficult circumstances. It is also clear that other family members provided assistance in caring for Kumanjayi at various times including Katrina and Margaret Brown, the Robertson family and many others.

The department accepts that more should have been done to support Ms Oldfield and to develop a safety network of family members to assist with Kumanjayi's care. In this regard, I refer your Honour to the Signs of Safety Practice Framework that was implemented by Territory Families in 2018. This is discussed from par 312 of the affidavit of Gabrielle Brown. The Signs of Safety Practice Framework is design to facilitate engagement with a network of person who are naturally connected to the young person.

Under the Framework practitioners develop a plan that drawers on and places responsibility for a young person on a larger group of persons. Such as approach would have pulled in a greater number of persons in the community to take responsibility for Kumanjayi. This type of safety planning is most effective when Aboriginal staff with an understanding of the community are involved in the process.

Since 2007, the department has employed Aboriginal family support workers in Yuendumu. The benefits of having Aboriginal remote family support workers employed within communities cannot be overstated. Remote family support workers bring with them local knowledge of the community, its culture and the families that live within it. They would typically be able to speak one or more of the local languages and they have the capacity to build and maintain relationships within community. Remote family support workers working alongside childhood protection practitioners promote culturally informed practice and actively include family and cultural considerations.

The evidence before your Honour establishes that Aboriginal remote family support works in Yuendumu developed a good relationship with Kumanjayi and were involved in service delivery to him, particularly in locating and communicating with Kumanjayi's family and involving them in decision making with respect to Kumanjayi.

Child protection and family support staff remained involved with Kumanjayi throughout his life, engaging Kumanjayi with therapeutic supports, engaging with family, ensuring Kumanjayi was receiving medical care, safety planning, taking steps to engage Kumanjayi in schooling and providing financial and other practical supports. The details of the department's engagement with Kumanjayi are set out in the affidavit of Gabrielle Brown from par 67.

With respect to youth justice. Again, there are examples of good practice and examples of where the department fell short.

In Kumanjayi's early teenage year he began engaging in antisocial behaviour and low-level offending. In 2014 when Kumanjayi was 13 years of age, he had his first serious involvement with the youth justice system and he was sentenced to a short period in custody at the Alice Springs Youth Detention Centre. He would go on to spend further periods in Alice Springs, in the Alice Springs Youth Detention Centre and in Don Dale.

It is clear that Kumanjayi continued to have a close connection with Ms Oldfield throughout this period. That much is evident, noting the significant number of phone

calls he had with Ms Oldfield during his periods in custody, often multiple times per day.

The evidence establishes that while Kumanjayi was in youth detention he was engaged in schooling, received medical care and support from mental health professionals and that psychologists were involved in delivering counselling to Kumanjayi and in implementing behaviour management strategies.

The records made it clear that a significant number of service providers supported Kumanjayi and worked together in an attempt to put him on a different path. His first period in detention is illustrative.

During Kumanjayi's first period in detention Aboriginal Remote Family Support workers, child protection practitioners, staff from Corrections, the Department of Education and WYDAC all worked with Kumanjayi's family to develop a plan for him. Under that plan Kumanjayi was bailed to attend Bush Mob, an Aboriginal controlled residential rehabilitation program. Kumanjayi would then spend a period at Mt Theo, an Aboriginal controlled youth diversion program an Kumanjayi was enrolled to attend an Aboriginal controlled boarding school known as SevGen. This is an example of good work undertaken by the department and the other service providers that were working with Kumanjayi. It was arranged in consultation with Kumanjayi's family. It involved a number of Aboriginal controlled programs and it had the potential to put Kumanjayi on a different path.

On the other hand, it is also accepted by the department that there were periods of detention during which limited support services were delivered to Kumanjayi and that more should have been done to assist him. The Department has done a lot of work to improve service delivery in youth justice space and it is committed to continuing on this journey. Details with respect to relevant reforms in youth justice are set out from par 265 of the affidavit of Gabrielle Brown.

Speaking briefly to housing. I would like to be clear that there are submissions made by counsel assisting and the other parties the department does not accept. The department does not accept that there is no evidence that houses in communities are designed to meet the practical needs of families. The department does not accept that there is no evidence before your Honour that houses are designed to meet the cultural needs of family and the department does not accept that the issues raised with public housing in remote communities are examples of institutional racism.

None of this is to shy away from the fact that more work needs to be done. The department is committed to continuing to improve public housing in remote communities.

Since taking responsibility for remote housing in 2012 from the Commonwealth, the Northern Territory has invested significant funding into remote housing and its staff have worked extremely hard to improve the stock that was handed over to it and to build new houses of a high quality in remote communities.

To provide some idea of the scale of the investment, in 2020 two billion dollars was committed to funding public housing in remote communities under the 10 year program “Our Community, Our Future and Our Homes.” Of this two billion dollars the Northern Territory Government contributed 1.5 billion dollars.

In March 2024 a new Federation Funding Agreement was signed between the Commonwealth and the Northern Territory Government committing four billion dollars over 10 years. Of this four billion dollars, the Northern Territory Government committed two billion dollars. These are significant amounts of money in the context of the Northern Territory. On a per capita basis the Northern Territory Government spends considerably more on public housing than the larger states like New South Wales and Victoria.

The evidence before your Honour confirms that the investment and the efforts of the staff of the department are making a difference. They are making a difference with respect to the number of homes that people can live in. As at June 2024, a total of $782.7 million had been spent under the “Our Community, Our Future and Our Homes” program building 640 new homes across the Northern Territory. They are also making a difference with respect to the liveability of the housing stock in remote communities.

The evidence before the Coroner shows that in Central Australia new built housing is of a high quality, they contain reverse cycle air conditioners, covered balconies, eaves and are insulated. They have an average energy efficiency rating of 6.4 stars. This is close to Dr Quilty’s expectations.

Further, the evidence before your Honour confirms that the views of the community are being taken into account. In this regard I refer to the evidence of Brent Warren with respect to the operation of housing reference groups, local decision-making and the engaging of Aboriginal controlled housing providers.

The people that I work with at the Department of Housing are proud of the work they are doing in communities and what is being achieved.

With respect to recommendations, I understand that counsel assisting will be circulating recommendations shortly. I want to take the opportunity to emphasise that the department are looking forward to seeing those recommendations and to working with the other agencies and non-government service providers, particularly those that are Aboriginal controlled and with the community, to improve the lives of persons in communities.

THE CORONER: Thank you, Mr McCarthy.

Mr Hutton?

MR MULLINS KC: Your Honour, before Mr Hutton commences, may I - - -

THE CORONER: Mr Mullins?

MR MULLINS: - - - unfortunately I must withdraw in a few moments. Ms Morreau KC will continue to represent the Brown family.

THE CORONER: Thank you very much.

Yes, Mr Hutton?

MR HUTTON: Your Honour, NT Health has filed detailed written submissions which, among other things, respond to the primary submissions filed by counsel assisting and some of the other parties. I will not recite those submissions at length. This morning, your Honour, I propose to emphasise a few matters of importance to NT Health. For the avoidance of any doubt, NT Health relies on its written submissions in full.

The first matter I wish to emphasise, your Honour, which is set out at par 3 of those written submissions and elsewhere, is that NT Health acknowledges the deep and ongoing trauma and the grief experienced as a result of Kumanjayi's tragic death. It is a profoundly saddening event.

NT Health extends again its sincere condolences to the Brown family, to the Walker, Land and Robinson families, to Kumanjayi's friends and to all those who cared for Kumanjayi.

NT Health also respectfully acknowledges the contribution of the Brown Family, the Walker, Lane and Robertson families and the Parumpurru committee to this inquest, including their extensive closing submissions.

Further, your Honour, NT Health acknowledges the lengths to which those parties, counsel assisting and the court more broadly, have gone to to make this inquest accessible to Yuendumu community and to the broader public.

As Dr David Reeve stated in his evidence, your Honour, it is devastating that nursing staff from the Yuendumu Clinic were not with Kumanjayi on 9 November to render him any assistance or comfort that they could. Many of those staff have devoted decades of their lives to serving their community and improving health outcomes, particularly for Aboriginal people in remote communities.

Many of the staff involved had lived in in Yuendumu with their own children or other family for years and felt the loss of a young person from their community sharply.

The reason those staff were not in community is, in our respectful submission simple, your Honour, and that is safety.

Dr Reeve, the then general manager of Primary Health Care in Central Australia determined it was not safe for those staff to remain in the community over the course of the weekend and they were to be temporarily withdrawn.

The reason there were serious concerns for safety was that from between 6 to 9 November 2019, the nurses in Yuendumu had suffered three attempted home invasions, one successful break in, one attempted break in and three break ins to vehicles.

Counsel assisting submitted yesterday that the break ins of nurses' accommodation must have been distressing, upsetting and frightening to those staff and we embrace that submission. The very real danger that such threatening behaviour poses to safety should not be controversial.

It's well acknowledged in the literature. It's been acknowledged in other coronial inquests and it's been acknowledged by counsel assisting and many witnesses during the course of this Inquest; both Warlpiri and non. Elder, Warren Williams' evidence to this Inquest was that the nurses were evacuated for a good reason and I don't blame them for that.

It is acknowledged, your Honour, you also acknowledged it, your Honour, at the conclusion of Dr Reeve's evidence. NT Health maintains that the decision to temporarily withdraw its nursing staff from Yuendumu on 9 November was appropriate and justified in the circumstances.

The temporary withdrawal guideline enforced at the time provided the process to be followed in the event that a temporary withdrawal was contemplated. The considerations identified in the guideline included, "Are staff safe in the community? Are staff at risk of harm? Have the police been notified? And logistical support including appropriate transport and accommodation for staff."

Dr Reeve's evidence was that whether staff are safe in a community itself required consideration of a number of other factors, including the staff member's subjective perception of their safety, the objective circumstances giving rise to the concern that staff may not be safe and the infrastructure or services available in the community to keep staff safe.

In applying the temporary withdrawal guideline and considering a potential withdrawal of staff from a community, Dr Reeve also had regard to the likely health requirements of the community over the temporary withdrawal period and the availability of health services outside the community, particularly the proximity of the nearest health centre.

Once a decision to withdraw staff had been made, the temporary withdrawal guideline directed that a number of notifications should be made, including how to notify the community. In his evidence, Dr Reeve identified that in the years preceding the events in Yuendumu, safety concerns had required the temporary

withdrawal of the health service from other locations in Central Australia, from Ali Curung, from Imanpa on two separate occasions and from Willowra(?).

In Yuendumu, Dr Reeve considered that staff should be withdrawn for several reasons. Firstly, the staff did not consider themselves to be safe. According to Dr Reeve, staff's own perceptions of safety is important because they are the ones present within the community and observing community attitudes firsthand.

If staff do not themselves feel safe, that is a warning that must be carefully considered. In Dr Reeve's experience and contrary to the submissions that are made by others, staff tend to underestimate threats to their own safety, rather than the opposite.

The number of break ins attempted home invasions and attempted break ins, as well as the vandalism of staff cars, were considerable, particularly in such a short period. Staff felt that they were being targeted. And given the break ins and attempted break ins had occurred at accommodation in different parts of the community, Dr Reeve understood why staff felt that way.

Dr Reeve considered that the antisocial behaviour towards the clinic staff was escalating. Home invasions, your Honour, when staff are present in their accommodation, pose a particularly high risk to staff. Dr Reeve's evidence was that in his experience, break ins typically occur when remote staff are not present, for example, at teacher's accommodations during school holidays.

Invasions that occur when staff are home and known to be home pose a different kind of threat. It shows a certain brazenness by those involved according to Dr Reeve and it is more likely to result in violence. There is a risk of the victim being assaulted if they try to stop the intruders from getting in or taking their belongings.

There had been unlawful entries in Yuendumu earlier that year which had been distressing to staff. In particular, a staff member had been broken into while she was at home and had woken up with an intruder standing over her in her bedroom.

That incident and the abduction of remote area nurse Gail Woodford from her home in South Australia three years earlier weighed on Dr Reeve as he considered the potential withdrawal of staff. Dr Reeve also considered that the afterhours callout service could be performed from the neighbouring community in Yulamu over the weekend.

Dr Reeve was aware that a callout service had been provided, albeit in the opposite direction, over the Christmas period in 2017 and 2018 without issue. It was also being provided at the time that Dr Reeve deposed his affidavit for this inquest.

Making this assessment, that is determining how best to deliver health services while also maintaining the safety of its staff, is the core business of NT Health. That was the evidence of Naomi Heinrich, the then regional executive director of Central Australia as well as Dr Reeve.

Ms Heinrich stated, “That’s a balance of risk that we have to undertake very day.” This decision to temporarily withdraw was considered carefully, soberly and fully cognisant of the importance of health services being available in a remote community.

Dr Reeve brought to his decision-making many years of living in and working in remote communities in the Northern Territory and in Western Australia. Those supporting Dr Reeve in this decision-making process including Helen Gill, were similarly experienced.

Ms Gill has lived in several remote communities since moving to Central Australia as a remote area nurse in 2004. Now a clinical nurse manager in Alice Springs, Ms Gill regularly spends the summer holiday providing nursing cover at remote clinics.

This is not none with any misunderstanding of the importance of remote health services to those communities. Dr Reeve also holds a doctorate in public health. These practitioners are experts in their fields, just as Dr Boffa and Dr Ah Chee are, as counsel assisting submitted yesterday.

And caution should be exercised before their assessment is disregarded or their motivations are impugned. Notwithstanding that the decision to temporarily withdraw nursing staff from Yuendumu was justified, in our respectful submission, your Honour.

Dr Reeve and Ms Gill each accepted that this withdrawal had revealed the need to review and strengthen the decision-making process. For example, as Dr Reeve noted in his evidence, the temporary withdrawal guideline in force in 2019 did not place an appropriate emphasis on consultation with community members, including Elders and other stakeholders. This has since been remedied.

Amendments to the temporarily withdrawal guideline occurred proactively well prior to the commencement of this inquest. As is detailed in our written submissions, your Honour, there have been a number of further changes and improvements to policy documents, including the development of a government-wide withdrawal policy.

What ultimately transpired in Yuendumu on 9 November 2019 with Kumanjayi’s killing was an extremely unlikely and tragic event. Prior to the shooting of Kumanjayi, Dr Reeve was not aware of a single incident of a use of force by police in a remote community in Central Australia that had required an emergency response. Sergeant Frost gave evidence to the same effect.

Rather than considering the increased presence in Yuendumu created a greater need for a health or emergency response, Dr Reeve considered the opposite to be the case. He viewed the police presence in the community as a protective factor.

It is very difficult for this court not to judge the decision to temporarily withdraw the nursing staff through the prism of hindsight and knowing that Kumanjayi would require an immediate emergency response several hours later. However, of course, that was not and could not be known to Dr Reeve.

Your Honour, NT Health did engage with this Inquest fully and frankly and in good faith, as senior counsel assisting urged at its commencement. Relevantly, NT Health facilitated the gathering of a considerable body of evidence in addition to that gathered by police in the coronial investigation and the criminal investigation. Eleven staff from NT Health gave evidence in person.

Among the matters touched on in the evidence that NT Health staff provided to this Inquest, your Honour, was the experiences of occupational violence by those staff. Health care workers in remote communities are at a significant risk of occupational violence. This is addressed at length in the affidavit of Ms Fleming, the Director of Work Health and Safety at Northern Territory Health whose affidavit is at tab 9(4)(a) in the brief of evidence, your Honour. It is also reflected in the evidence of Dr Boffa from Congress.

The literature cited by Ms Fleming in her affidavit establishes that nurses generally experience workplace violence at a rate four times higher than the average employee and the risk is higher still among remote area nurses.

Dr Boffa's evidence was that remote area nurses experience rates of violence two times higher than their urban counterparts. Analysis of incidents of severe violence towards remote area nurses demonstrates that the significant risk factors are being female, in and around your accommodation and after hours. Violence against remote area health workers is often overlooked and under-reported as was observed in the Context of Silence Report which is referred to in Ms Fleming's affidavit.

The remote safety project instituted by NT Health following Ms Woodford's death in South Australia recognises it is vital that health services in the Territory can recruit and retain high quality nursing staff to work in remote communities and that in order to do so nurses must be kept safe at work. The need for health services to ensure staff safety is again, uncontroversial and it is reflected in - among other things - employers' legislative duty to ensure the safety of their staff at work, the policy and advocacy of peak bodies including the Australian Nurse and Midwife Federation and CRANAplus, the adoption of zero tolerance policies by State and Territory governments and the withdrawal policies both of NT and ACCHO Health Services.

Relevantly, your Honour, the policies of both NT Health and Congress prohibit staff from seeing patients at staff accommodation under any circumstances. Congress' policy states:

> "Dispensing of medication and providing other treatment from staff accommodation no matter how minor, is not acceptable. This is not supported by management and will be considered inappropriate conduct."

This reflects the assessment by that organisation that admitting patients into staff accommodation poses an unacceptable risk. This assessment applies many times over, in my submission to the risk posed by attempted invasions to staff homes after hours.

Your Honour, prior incidents of break-ins and home invasions in Yuendumu had resulted in considerable efforts to address that behaviour and to engage with the community to develop solutions. This is addressed in part (e) of NT Health's written submissions. Broadly, these efforts encompassed the following;

1) discussing the offenders at monthly community safety action plan meetings.
2) convening a Yuendumu community safety committee framework and
3) calling further community meetings specifically to discuss the increased offending.

Community safety action plan meetings were facili8tated by NT Police around bringing together the community and were attended by various stakeholders, including night patrol, the women's safe house, the Yuendumu old persons program, the Yuendumu school, WYDAC, Yuendumu mediation, Territory Families, the clinic and a number of community elders.

Ms Symonds and Ms Watts attended those meeting on behalf of NT Health and children and break-ins was a standing agenda item at these meetings.

In March 2019, in response to increasingly problematic crime in Yuendumu, Superintendent Nobbs determined police needed to do something decisive. He visited Yuendumu for a week and established the Yuendumu Community Safety Committee framework consisting of fortnightly meetings of which he continued to chair. During this first week he held multiple meetings including discrete conversations with different groups, elders and stakeholders. Superintendent Nobbs described the actions taken as follows:

> "Implementing high visibility patrolling as a circuit-breaker. Broad-based community engagement around target hardening strategies, building an integrated inter-agency framework and identifying repeat offenders and supporting them through an end-to-end model."

Community meetings were also called by other stakeholders to address the increasing crime in 2019 and Ms Watts recalls attending at least two such community meetings in 2019 specifically called to try to resolve escalating crime. Unfortunately, despite the efforts of those involved, these were not successful.

Your Honour, part (f) of NT Health's written submissions address the withdrawal of the nursing staff from Yuendumu on 9 November including the various discussions between staff within the community and in Alice Springs.

In its written submissions NT Health has sought, insofar as was possible, to adopt counsel assisting's summary of those events and there was agreement on a number of factual matters, however, there are also a number of material points of departure and these are set out in detail in the written submissions and summarised at par 137, your Honour.

For example, counsel assisting's account of the night of 8 November 2019 omits two of the attempted home invasions against the clinic staff.

The relevant facts, your Honour, leading up to the temporary withdrawal were as follows; on 6 November 2019 Ms Symonds' home was broken into. The offenders attempted to gain entry by smashing a hole in the Gyprock roof and then using a shovel, they jemmied the security screen off the window. In addition to a shovel, other tools were scattered around the yard, inside Ms Symonds home was ransacked and "everything was everywhere" according to her. Ms Symonds was understandably shaken up by the offending.

One day later, on 7 November, Ms Symonds' car was broken into at the clinic. The passenger window was smashed and the car was rummaged through.

The following day, on the evening of 8 November 2019, across the community there were three attempted home invasions at the homes of Ms Watts, Ms Meredith and Mr Aulting(?) and an attempted break-in at Ms Symonds home and the Rewaka's vehicle was broken into in their driveway, the clinic ambulance was also ransacked outside Ms Watts' house.

In the attempted invasion of Ms Meredith's house the intruders attempted to peel back her corrugated iron roof to gain access, while she was inside. Intruders similarly climbed onto Mr Aulting's roof.

In the attempted break-in at the Symonds home, a pickaxe was found wedged in the window and other tools including shovels were scattered around the yard. The force used in the attempted break-in was sufficient to shake the walls of Ms Watts' house next door and wake her.

By way of comparison, your Honour, the number of attempted unlawful entries at nursing accommodation on the night of 8 November was equal to that recorded across the entire southern region on 6 November.

On 9 November the clinic was closed, as it was a Saturday. Shortly before 9 am Ms Holland called Ms Watts to conduct the on-call handover. Ms Watts told about the events on First Street overnight and thereafter, Your Honour, followed a number of telephone conversations and meetings between staff relevant to their safety.

It is not practicable for me to address those comprehensively now, your Honour, however, I do note that it was upon gathering at the Rewaka's house and learning that nurse's homes across the community had been targeted by the offending, that

the nurses decided to seek approval to be temporarily withdrawn from the community.

During the course of those meetings that morning it was also confirmed that none of the patients on the vulnerable person list in Yuendumu were acutely unwell.

Prior to the withdrawal steps were taken to notify the community of the withdrawal including it was announced to the assembled community via loudspeaker that afternoon. Additional medication was also dispensed and access to the morgue was arranged.

At around 3:30 pm the last of the nursing staff departed the community.

Your Honour, part (g) of NT Health's written submissions analyse the decision to temporary withdraw staff and, as I have stated, NT Health maintains that the decision to withdraw was a necessary and proportionate response to the escalating circumstances faced by those nursing staff.

We submit, your Honour, that you should find that there was a need to withdraw in the circumstances for the following reasons:

The level of threat to staff was both subjectively and objectively serious. There were no other mechanisms immediately available which could ensure staff safety on the nights of 9 and 10 November. Methods previously tried had not prevented the escalation of crime.

And even with the benefit of hindsight, the only identified solution that may have been implemented in the time available and adequately addressed staff safety was engaging security guards. However, this had not previously been attempted to preserve health services in a community. It has been since.

Further, the risk to those living in community associated with the temporary withdrawal of staff and a reduction of services was objectively low, given the coverage to be provided from Yuelamu and as the retrieval data provided to this Inquest demonstrates.

Your Honour, each of those points is addressed in detail in the written submissions. Notwithstanding the conclusion, it is acknowledged by NT Health that there were shortcomings with the decision-making processes I've stated.

A written risk assessment was not completed in relation to the withdrawal. In the circumstances, it could and should have been. Local Aboriginal staff were not adequately consulted in relation to the withdrawal of the other clinic staff. They needed to be. Those staff are valued members of the health service and further, those staff may have had insights not available to the non-local staff.

Although local staff were not included in the discussions regarding the potential withdrawal, the offer for those staff to be withdrawn to Alice Springs with their family

was made. NT Health acknowledges also that, in the circumstances of this withdrawal, more extensive discussions should have taken place with NT Police prior to it occurring.

The deficiency in the previous policy requiring simply a notification of police, I've touched on. Further, NT Health accept that greater efforts should have been made to discuss the potential withdrawal of staff with community leaders before the decision was made.

In view of these shortcomings which are accepted, your Honour, amendments to policy documents have been made by NT Health. There are just a handful of other additional issues I wish to address.

Firstly, your Honour, both NAAJA and counsel assisting submit that the coroner should find that it was possible for Kumanjayi to have survived his injuries if he had received treatment at the Yuendumu Clinic and do so by reference to the report of Professor Michael Reid prepared for Mr Rolfe's criminal trial.

Frankly, your Honour, this was a surprising submission to receive in closing, given Professor Reid was not required to give evidence during 68 days of these hearings, nor was his evidence prepared for this Inquest or cited during this inquest, or put to any other witness.

In any event, we submit that, properly considered, Professor Reid's evidence does not provide a basis for the findings that are proposed for the reasons that are set out in our written submissions and particularly when the totality of his evidence at Mr Rolfe's criminal trial is considered.

Second, NAAJA has made both primary and reply submissions in support of a finding of institutional racism. I wish to say something of the procedural history and previous rulings relevant to this, your Honour. On 9 May 2022, NAAJA sought inclusion on the issues list of the question of whether there was any evidence of systemic racism or cultural bias on NT Health or some sections of it.

On 26 May, NT Health filed written submissions in opposition to the inclusion of that question in the issues list. That same day, the question was rejected by counsel assisting as too broad and it was omitted with NAAJA's consent from the revised issues list.

On 26 July 2022, NAAJA commissioned a report addressing substantially the same question that NAAJA had agreed to omit from the issues list. On 16 September, that report was finalised. It was circulated to the parties two days later, and NT Health and others objected to it.

After the parties' submissions were filed, NAAJA commissioned a supplementary report which purported to remedy some of the issues identified in the original. It did not do so and NT Health and other parties maintain their objections to the original report and extended them to the supplementary report.

On 27 April 2023, your Honour, you ruled that you would not receive the original report or supplementary report, save for certain parts of part 3 of the original report. The parts of the reports dealing with the supposed racism in NT Health were excluded in full.

The result is that now, NAAJA seeks for findings and recommendations to be made in relation to an issue which was excluded from the issues list with NAAJA's consent, is unsupported by expert evidence and which was not the subject of particular inquiry during this inquest.

That history to one side, the findings sought by NAAJA should not be made, in our submission, for a number of reasons, and these are set out in our written submissions also. They include the following:

Firstly, your Honour, and fundamentally, the Briginshaw standard applies in relation to a finding of racism against an individual or an institution. We submit that your Honour could not be satisfied on the available evidence that allegations of institutional racism could sustain a finding to that standard, or at all.

At par 256 in their reply submissions, NAAJA refer to three authorities and purport to set out their combined effect. That summary provided is selective, in our submission, your Honour, and we note that in quoting *Sharma* at 172, NAAJA omit the remainder of the paragraph which relevantly reads:

> "It was common ground at first instance that the standard of proof for breaches of the RDA is the higher standard referred to in *Briginshaw v Briginshaw*. Racial discrimination is a serious matter which is not to be lightly inferred."

To the point made by Mr Boe yesterday that agencies at this Inquest appear offended at the notion that a finding of institutional racism could be made against them, I would say this; insofar as my client is concerned, it is a serious finding, firstly.

And second, it cuts against the volume of work that NT Health is doing which demonstrates its real commitment to First Nations people and to strengthening the way services are delivered. Some of that is in evidence before the court, your Honour, for example, in the affidavit of Jennifer Hampton. However, much of it, including the work being done by the Chief First Nations Health Officer, for example, is not.

The evidence that is cited by NAAJA in support of the supposed institutional racism is, in our submission, remarkably thin. For example, NAAJA submits that factors as broad as generally poor decision-making are both evidence for and constitutive of institutional racism. A further difficulty with this submission is that it was not put to many of the witnesses whose words and actions are now cited as indicative of racism.

No opportunity was provided to them to respond as it properly should have been. This notably extends now to a proposed finding of racism against the RFDS who is not a party to this Inquest.

In NAAJA's reply submissions at 233 to 239, they submit that pointing out serious harm to service providers in Yuendumu and remote communities is a concerning race-based process of generalisation because there's no link between the events, apart from the fact of the persons involved being Aboriginal or Torres Strait Islander. That submission is rejected, your Honour.

There is nothing in the material we refer to which identifies the race of the perpetrator or perpetrators in these incidents or indeed of the race of the victim or victims. The staff withdrawn from Yuendumu on 9 November 2019 were not all of the same race, nor did all the examples cited in our submissions involve Aboriginal and Torres Strait Islander persons.

The common factor linking these events and the reason they are referred is that they are examples of occupational violence perpetrated against service providers in remote communities. It is occupational violence that service providers, both government and Aboriginal community controlled, including Congress, including NAAJA, have to and do take seriously.

As to Congress' withdrawal from Mutitjulu, your Honour, we submitted in writing that this event is likely to be of very limited assistance to your Honour in making your findings.

In the event that you do wish to make findings in relation to it as is pressed by NAAJA, we say that the contemporaneous email correspondence regarding the withdrawal including who was consulted and when the service resumed, speaks for itself.

There is common ground, your Honour, I am pleased to say, between NT Health and NAAJA on the desirability of transitioning to community-controlled health organisations. Where we depart is that transition should occur in all communities immediately. There is no evidence before your Honour that that is desirable or achievable. Again, this is an issue that NAAJA sought to add to the issues list in May 2022, then consented to its omission and now presses for findings in relation to, without evidence to support.

Briefly, your Honour, on the subject of cross-cultural training, Mr McMahon submitted yesterday that he was surprised there was not more enthusiasm for this. I am pleased to tell Mr McMahon there is enthusiasm at NT Health.

Your Honour may recall Ms Heinrich made available to the parties, NT Health's Aboriginal Cultural Awareness Program or ACAP, that's a program developed in combination with Flinders University and in collaboration with senior Aboriginal Staff from NT Health. Ms Heinrich invited parties to comment on that program,

your Honour, during her evidence and this invitation stands to Mr McMahon's comments or indeed to any others.

Finally, your Honour, I note, as Mr McCarthy did, counsel assisting's indication that recommendations are to be proposed on Tuesday next week, NT Health welcomes those recommendations and the recommendation that was flagged yesterday. NT Health has proposed five recommendations of its own at par 604 of its written submissions if they are of assistance.

May it please the court.

THE CORONER: Thank you, Mr Hutton.

DR DWYER: Your Honour, I note the time now and that we might have a morning tea break. Might I just address one matter that was raised earlier by Ms McNally? I will take a bit more time later but it just - I just need to correct the record about one issue.

THE CORONER: Sure.

DR DWYER: And that is in relation to the suggestion that her client had not had an adequate opportunity to participate. I want to address particularly the suggestion that he could not provide more documents. Ms Walls in response has just gone and gathered some relevant email correspondence and it won't be - your Honour will not be informed about this by Ms McNally's written submission. In her written submission at par 6 she says:

> "On 9 June 2023 we enquired of counsel assisting as to whether the coroner would issue Sergeant Bauwens a summons to produce documents or materials."

What is not included in the written submissions of Ms McNally is the response from that. After that, as your Honour will see, if I mark these for identification, on the same date Ms Walls' reply to Ms McNally saying that her client was "Not under any obligation to produce any further material but if you would like to do some under a summons", she was inviting her to discuss that.

They then had a phone call where there was an invitation to draft a schedule to a summons. That was never done and then following that, some months later in - sorry, Ms Walls invited her to draft a schedule that could be issued if he would like to produce those materials under summons. That wasn't done by Ms McNally.

Then on 20 September 2023 Ms Walls sent to Ms McNally an email which includes"

> "It's clear that Sergeant Bauwens is in a unique position to provide helpful evidence to the court about a number of matters including, for example, the resourcing and operation of the IRT. I also note your email below about the

possibility of Sergeant Bauwens providing further documents to the court. Noting that Sergeant Bauwens participated in two recorded statements and gave evidence at the Supreme Court trial of Mr Rolfe, we invite him to provide a written statement that addresses any additional matter that would assist the Coroner. That written statement can attach any further documentation that he believes would assist her Honour in her task. It is hoped that in providing a statement the process of Sergeant Bauwen's giving evidence will be as efficient as possible and further, if Sergeant Bauwens would like to do this and feels he would like assistance in addition to your assistance, Superintendent Lee Morgan can make arrangements for that statement to be taken".

So every opportunity was provided to Sergeant Bauwens through his legal representatives or through the officer-in-charge to assist this court in that regard.

There was a follow-up letter after Sergeant Bauwens gave evidence, Mr Rolfe gave evidence nominating the TRG awards when it was discovered that, in fact, Sergeant Bauwens was a recipient of one of the racist TRG awards. A letter was written to him by Ms Walls on 27 March 2024 setting that evidence out and inviting Sergeant Bauwen to provide a supplementary statement addressing those matters, which he did.

Thank you, your Honour.

THE CORONER: Thank you for that clarification in relation to further opportunities for Mr Bauwens to provide additional evidence if he chose to do so.

DR DWYER: May it please the court.

MS MCNALLY: Coroner? Coroner? It's Ms McNally here, if we could just make short reply submissions.

THE CORONER: Ms McNally, sure, go ahead.

MS MCNALLY: Thank you, Coroner. I thank Dr Dwyer for those comments which, in fact, demonstrate the point I had made earlier. Firstly, it is not the role of witnesses to collate and provide documents to the court - that's counsel assisting's role. I've made the point that my client had extremely limited funding and did his best and thirdly, when he was in court and attempted to provide further comment he was not able to.

So I acknowledge the points of Dr Dwyer and say that they are exactly the points that I was making this morning.

THE CORONER: Thank you for that additional assistance.

MS MCNALLY: Thank you.

THE CORONER: We will now break for the short morning tea adjournment.

ADJOURNED

RESUMED

THE CORONER: Mr McMahon?

MR MCMAHON: Before Dr Freckelton starts I just propose your Honour that Robin Japanangka Granites is in court who was discussed yesterday.

THE CORONER: Thank you.

Good to see you Mr Granites.

Dr Freckelton?

MR FRECKELTON: Thank you, your Honour. To commence Ms Burnnard and I acknowledge the custodianship of the unseeded lands of the Arrernte people who are at this inquest is taking place and we pay our respects for the hospitality and the tolerance of the Elders of this land both from the past and those who are present today including Mr Granites and we (inaudible) Warlpiri. We would like to make particular mention of the generosity of spirit of the many members of the Warlpiri who interacted with us in a collaborative way looking to forge a new and constructive relationship with the Northern Territory Police Force.

In that context, we acknowledge too that some legal representatives for the families NAAJA and for Parumpurru have interacted with those representing the Northern Territory Police Force in a collaborative and constructive way throughout. And we hope that this will provide a basis for ongoing corporations.

We start our submissions my reiterating our condolences to the family and friends of Kumanjayi. There were many who valued him and loved him and it's very important that that be acknowledged in proper memory of Kumanjayi. We have identified a series of apologies made on behalf of the Northern Territory Police Force in our written submissions but specifically now we apologise for the role played by members of the Northern Territory Police Force in Kumanjayi's death and for the events after his passing. In particular, the unauthorised conduct of Mr Rolfe but also the carrying of long arms before and after his death, the decoy plan involving the ambulance and the way in which Kumanjayi's passing was communicated to his family.

Northern Territory Police Force commenced its involvement in this inquest by promising to listen and committing to learn. We meant it and we have learned a great deal. Ms Burnnard and I have - (inaudible) senior and less senior members of the police force who have been present throughout this inquest. How seriously the Force has taken this inquest is (inaudible) demonstrated by the presence of a Deputy Commissioner throughout the whole process.

We are here not to provide airs or platitudes but what we have done already within the Northern Territory Police Force is to make real changes to reduce the potential for an avoidable death like Kumanjayi's to happen again. Northern Territory

Police Force said that it would cooperate fully with the inquest, would not advance technical arguments and would refrain from combative cross-examination. We said that if counsel assisting needed documentation or assistance, it would be provided. We have endeavoured to keep to that approach throughout this lengthy process.

In our submissions, we have provided extensive analyses of the evidence, in an attempt to provide information at a practical policing perspective. Northern Territory Police Force has made multiple concessions and has outlined the nature of reforms that it has set in motion.

To use the words of counsel assisting yesterday, in these oral submissions, we too will not engage in "sugar-coating". Some of what we say will be confronting to certain of the parties. But what we say is considered and we hope it will be received in the spirit in which it is given.

We have endeavoured in these submissions which we are going to put before you today to incorporate two particular considerations in a presentation. First, what we say to your Honour is that there is a need for intellectual rigor and restraint in the making of both findings and recommendations.

Entirely understandably, there are broad-based objectives which a number of the parties to this Inquest have. An example we've just heard about is the campaign waged by Sergeant Bauwens and Ms McNally to bring back the IRT or some varied adopted. That is not going to happen.

It does not follow that because a death prompts reflection on social, legal, criminological, sociological issues, policing issues generally, which is appropriate that they be the subject of coronial comments or recommendations.

Such comments and recommendations have a particular status and they have a specific statutory authorisation and they're subject to preconditions. I will say more about that soon. Secondly, we make the observation that policing in the contemporary Northern Territory has particular challenges and stressors.

As counsel assisting has accurately observed in her submissions, policing in the Northern Territory is a stressful and demanding job. That is an understatement because the challenges of such high levels of domestic violence, as your Honour set out at the start of this week, burn out and cross-cultural complexity, along with short staffing, will make the process of providing sensitive trauma-informed and culturally aware policing very challenging indeed.

These forms of policing are a marvellous opportunity for new and mature police to work with persons of remarkedly diverse First Nations' backgrounds as well as others. Those opportunities enrich the experience of being a police officer.

But along with the richness comes chronic exposure to trauma, anger and distress. Now, this is not a request for sympathy, it's merely an observation of the context of provision of policing services and the reality of the policing environment.

We commence our submissions by some observations in relation to submissions advanced by those representing Mr Rolfe, as he now is. I will refer to him as Mr Rolfe because he has been dismissed from the Northern Territory Police Force, so he is no longer a serving member. He should not be referred to any longer as Constable.

We would like to delineate what we submit is the proper line for engagement in this Inquest by way of findings. And in this regard, we depart significantly from Mr Rolfe and Sergeant Bauwens and we have a slightly different perspective to that of the families, NAAJA and Parumpurru.

From the perspective of the Northern Territory Police Force, the line needs to be drawn where the - when the first shot was discharged by Mr Rolfe. From then onwards, in our respectful submission, what occurred was the province of decision-making by a jury in the Supreme Court of the Northern Territory.

So we offer no submissions as to what took place after that; the propriety of it, the prompts for it or for legitimacy for discharge of a firearm. In our respectful submission, that ought not to be traversed by this Inquest because it is the territory of the criminal justice process.

But - and this is where we depart markedly from those representing Mr Rolfe and also Sergeant Bauwens - what occurred right up to that point, we say is the province of this Inquest, subject to some limitations which I shall articulate.

Most particularly, what took place in the decision-making leading up to the entry into Houses 577 and 511 and even what took place within 511, that isn't to reflect upon the propriety or legitimacy of the discharge of Mr Rolfe's firearms.

It is to enable a proper understanding of how the tragic events took place, what the influences may have been, what the motivations might have been. That is at the very core of your Honour's obligation under the Act to make findings about the circumstances of Kumanjayi's death.

We listened attentively to what was said by Mr Officer yesterday, and one thing particularly struck us. He was keen to put submissions to you about cause of death and to draw inferences about what should not be within your province, what should be outside the scope of the Inquest.

But he mentioned very little about circumstances of death. We don't know if that was deliberate or inadvertent. But the distinction between the two matters is fundamental to the operation of this jurisdiction. Circumstances of death enable your Honour to investigate and make findings about the context of a person's death, how it occurred, the manner.

All of the things surrounding a death, leading up to, and to some modest degree, what occurred in the aftermath as well. That is the very essence of contemporary coronership where we have narrative findings which enable persons, for instance,

within the Yuendumu Community, to understand better how it could possibly be that police officers entered the house and how the events after that ensued.

To suggest that there should be a preclusion on looking at those matters, in our submission, fundamentally misconceives the nature of a coronial responsibility. Now, many submissions have been made on behalf of Mr Rolfe in particular in respect of the scope of this Inquest.

Your Honour has made two key rulings and I won't identify the essences of those in any detail, save to summarise them, as we apprehend, your Honour ruled.

In your second ruling, you adopt real objections made to the scope of the investigative process of the Inquest rejecting arguments advanced on behalf of Mr Rolfe about receipt of evidence about the text messages and the evidence of Ms Campagnaro.

And the essence of your Honour's ruling was that you were prepared to investigate whether the text messages constituted evidence that Mr Rolfe was racist or that there was a culture of racism in the IRT or its patrol group and if such racism played a conscious or unconscious role in the acts which caused death.

You found that this was potentially relevant to the circumstances of death. Now, there will be times in the Inquest when we have been quite quiet and other times, we've been asserted. We were quiet about that, because it appeared to us that it was appropriate for your Honour to investigate those matters and it was in the public interest that you do so.

In your third ruling, you adopted a further set of objections that were advanced by Mr Rolfe, and some of this was usefully summarised by other of our friends this morning. There was a sequence of interactions about the parameters of the inquest with a provision of scope document by counsel assisting early and acceptance of it by Mr Rolfe, and then a reneging on that and various other controversaries.

And by the time of ruling number 3, you dealt with multiple objections from Mr Rolfe to the receipt of various categories of evidence.

You concluded that the evidence about the honesty of Mr Rolfe's application to join the police force might prove relevant to his credibility and reliability. You found it wasn't possible to determine whether the force recruitment policies were connected with the death but they could have adversely affected the decision to offer him employment. You said it wasn't possible to decide at that stage whether more robust recruitment processes would have disclosed attitudes or pathologies suggesting Mr Rolfe was not suitable to be employed.

You ruled too that expressions of contempt from Mr Rolfe about female and bush police had the potential to be highly relevant to whether there was a deliberate disobedience to the plan of Sergeant Frost and that the text message suggested a prima facie association between those sentiments and inappropriate attitudes to the

use of force. You considered that Sergeant Bauwen's and Sergeant Kirkby's text messages - and I will return to these - should Ms McNally be listening - were prima facie evidence that those members held and tolerated racist or inappropriate behaviours and expressed those to their subordinates.

(Inaudible) discipline demonstrated by the messages might be relevant to why the action plan was not carried out, the development of attitudes and behaviours of Constable Rolfe or whether Sergeant Kirkby tolerated or encouraged dishonesty by Constable Rolfe.

We do not urge your Honour against those rulings. We identify no rule error in them. They occurred at an early state in the inquest and identifying what evidence you were prepared to listen to but, of course, what you listened to and what you draw upon ultimately in your findings are two different things.

Your rulings enable the reception of a variety of forms of information including what Ms Campagnaro had to say, what was in the text messages and you indicated preparedness to hear about various uses of force engaged in by Mr Rolfe prior to what occurred in relation to Kumanjayi.

We agreed with Mr Officer to this limited extent, we have reached the point in the inquest now where it is your role to make findings about circumstances of death in particular.

Now, that's where the legislation guides and delineates what your Honour can do. It is correct that insofar as your Honour might contemplate making s 34(3):

> "- comments on public health or safety or the administration of justice" - they must be - these are the words of the legislation - "connected with the death".

Under s 35(2) you are empowered to make recommendations on - and I quote:

> "a matter, including public health or safety or the administration of justice connected with a death."

So the same words, "connected with a death."

Likewise, your Honour is obliged to, under s 26(1) to:

a) "investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody and;
b) "you may report" - that's how it's put in the legislation -"on a matter connected with public health or safety or the administration of justice that is relevant to the death".

In an inquest such as this under s 26(2):

"- you must make such recommendations, it's obligatory then, with respect to the prevention of future deaths in similar circumstances as you consider to be relevant."

The bottom line of reviewing the words in the legislation is that your powers are enlivened in respect to findings and comments and recommendations when what you are contemplating is connected with the death or relevant to the death and it is more than apparent - and it is appropriate to take a purposive approach to interpreting s 26 that you are obliged under a legislation to make such recommendations with respect to the prevention of deaths that bear any similarities to Kumanjayi's.

What this means is that your Honour has considerable latitude in relation to making comments or recommendations or reporting but there does have to be a nexus of the required kind. That can't be tangential, it can't be peripheral to your findings and your findings have to be about - for these purposes - cause and circumstances of death.

That has ramifications for a number of the matters that have been raised before you and which are traversed in the - was it 1,990 pages of submissions that you now have.

In our respectful submission it means that there are some limitations - not the kinds of limitations proposed by Mr Rolfe or Sergeant Bauwens, but there are some limitations upon the kinds of comments and recommendations which it is open for you to make.

I propose now to develop that proposition further. Now, you've heard a reiteration of the aggrievement of two of the persons involved in the obnoxious text messages, that they have been used in these proceedings and what you do know is that Burns J found that they had been lawfully obtained and the position of the Northern Territory Police Force is that you can draw upon the unedifying contents of those text messages as you deem appropriate, provided that you identify matters within them which show propensities or tendencies or a state of mind or an attitude which is relevant for your findings about cause or circumstances of death.

Now, there are some very straightforward things that can be said about these text messages. You have heard plenty about them prior to now but it is absolutely undeniable that Mr Rolfe is a racist. People who talk about "loser locals", "coons", "Neanderthals", "losers" on the basis of their Aboriginality, are racist. And it is important to call it as it is. And the position of the Northern Territory Police Force is that it is trying to call it as it is and do something about people who behave that was in its force and the commitment from Mr Murphy is to be robust in that regard.

And we have no reservation in saying to your Honour that you, too, should make robust characterisations of communications of the kind in which Mr Rolfe engaged. So he is a racist. It is also clear enough that he is sexist. He is a misogynist. He is homophobic, he has disrespect for authority and he has contempt for bush cops.

The language in his texts is eloquent as to his values and his attitudes (inaudible) and some of those who corresponded with him and communicated in a similar kind are the same. Those are the value which are just inconsistent with contemporary policing anywhere in Australia and that includes the Northern Territory.

And the evidence from these texts has been corroborated by aspects of Mr Rolfe's own evidence in this court and his demeanour and his evasiveness and witness faults. He lacks insight. He has a propensity to deny what cannot be denied and he rationalises what he cannot avoid confronting. All told, the combination of his evidence and the texts together with collateral evidence, establish in our submission, that Mr Rolfe's credibility is, to put it in a very generous way, open to serious doubt. He is prepared, more robustly, to deceive, to lie and to misrepresent when it suits him. And we know that from a key exchange which he had with another witness about his camera and what he would shift in order to enable proper vision of what was actually taking place. And it (inaudible).

So it's reasonable to conclude that disingenuous approaches have suit him in this court. So what then do these propensities or characterisations of the disgraced Mr Rolfe mean for the findings that should be made by you? Now it was suggested yesterday that the Northern Territory Police Force and others I think, were uncomfortable with the "R" word, we are not. We are not uncomfortable with naming the word or naming the people. And that's why we have straightforwardly characterised the sort of person that the former Constable Rolfe is.

So what about those propensities where are they relevant to your Honour? We answer that by reference to what you framed as potential relevance in rulings number 2 and 3. It seems to us that the particular relevance is the relation to how (inaudible) de facto leading the five persons at Yuendumu on 5 November 2019 did when they left the room where the briefing from Sergeant Frost took place.

The evidence of what occurred in that briefing is not entirely clear but quite an amount is now. Sergeant Frost remitted a plan to the IRT members and Mr Donaldson by email and then she conducted a briefing with them at the station. We joined counsel assisting in her analysis that the briefing in essence had three phases. There was a very limited one with Mr Donaldson after which he took himself off to familiarise himself with Yuendumu with Loki the dog.

Then there was a more extensive briefing and the key briefing that involved Constable Kirstenfeldt and Mr Rolfe. And finally there was some interaction when the four men were present and Mr Donaldson returned and Constable Alefaio was also within earshot.

Now it seems to us that it's useful to review the content and purpose of Sergeant Frost's plan and we accept that at par 712 of our submissions but it contemplated two aspects to the task given to the IRT. And that was a task that had been authorised by Superintendent Nobbs and it had been passed by Assistant Commissioner Wurst as well. But essentially it was Sergeant Frost's plan. And we stand behind that plan. It was a good plan. One can say it might have some more

ideally it might have had a risk assessment but it wasn't a TRG plan. It was a straightforward indication of what was required of the IRT members who the system's following, Mr Donaldson.

So what was required? Well first of all, there were to be high visibility patrols and response to call-outs. And the idea of it was that that started at 11 o'clock. Why then? Because they were there as supplementation to exhausted local resources. And that was going to enable the local members to get some rest and commence again with their responsibilities the next day. That's important. That was one of the major reasons why they were brought into Yuendumu. It wasn't all about arresting Kumanjayi.

Now it must definitely be with an objective of taking Kumanjayi into custody. The aspiration was to do that when the funeral was concluded. And that had been the subject of discussions with members of the family in the days before; Wednesday, Thursday, Friday. The hope was still there that he might bring himself into custody or be escorted by family members prior to the next morning. But absolutely at the core of the plan (inaudible) done (inaudible) after 5 o'clock. Why 5 o'clock? Well Mr Alefaio was required to attend the police station at 5:00 and participate in the real nuts and bolts briefing as to how the apprehension was going to take place. He was going to be aware. He was going to take position in one place or another. Where was the best place to go first because there were a number of houses that were identified as potential places where Kumanjayi might be.

So that next opportunity for planning was crucial. And secondly, Mr Alefaio was going to be there. Now the best of all worlds, it would have been - Williams still was there - but there was some issues in relation to him and exactly when he would have completed what he had to do in relation to matters associated with the funeral. Also he was related to Kumanjayi. That didn't completely preclude his involvement but he - he believed that there were a number of issues as to whether he was the person. The key thing was that someone be present who could 1) recognise him. Which, of course, ended up being important. And 2) be a source of familiarity when Kumanjayi was being taken into custody.

So it would not be just persons, strangers, to use the words that have been (inaudible) from out of town. And integral component to the plan. And there was something else. And something very contrasting to the way in which Constable or Mr Rolfe intended to go about his policing practice. It explicitly contemplated that it would not be possible to take him into custody that next morning. Because there was no certainty as to where he'd be. There were pretty good ideas because there was nowhere he tended to sleep and which houses he tended to spend time in. That was finite. The proposition that there was no idea is just spurious and advanced to distract your Honour.

But it's true that there was no certainty as to where he'd be but then again there aren't - there isn't certainty about very many things in life. Who knows exactly what any of us will be doing tomorrow morning? (Inaudible) possibilities some of them are good and some of them not so good.

So it was expressly identified that if he could not be taken into custody, the same process would take place the next day. So Sunday morning that didn't work out. Then Monday. It didn't have to be done overnight. There was no urgency. Kumanjayi needed to be taken into custody. There was a warrant out for his arrest. He'd engaged in a serious assault on the Wednesday and there was a warrant to take him into custody as a result of his removal of his ankle bracelet and his decamping from where he was supposed to be. But it did not have to be done that night or the next morning. And Sergeant Frost's plan, sensibly contemplated a patient and iterated or iterative process to bring him into custody.

And we'll say something about the presence of Loki the dog later on but part of the presence of a dog was to make arrangements for a way of dealing with the situation should there be anything like what had taken place in the days before.

So the plan of Sergeant Frost was a stark contrast to the primitive de facto plan which ultimately was deployed by Constable Rolfe. Now Rolfe's plan wasn't written down. And all we can do now is try to reconstruct what he had in his head and what went by osmosis to his colleagues.

But what we can say of Police Sergeant Frost's plan was that it patiently and explicitly contemplated multiple attempts as necessary to take Kumanjayi into custody with the assistance of local input. At first Mr Alefaio but potentially ACPO Williams later on, it depended how things evolved.

The idea of that was to avoid the scenario that had unfolded on the Wednesday. What happened then - and we don't need to go into details of it now - was that Kumanjayi was cornered in a confined space, he was worried about the wellbeing of his girlfriend, he was alert late in the afternoon and he'd threatened officers with a weapon in what was a frightening episode.

The Frost plan enabled further engagement and obtaining advice from senior officers if Kumanjayi couldn't be located at first. It minimised confrontation. It maximised the potential for minimal use of force and it drew upon the presence of local police to assist in the process.

Now, at trial Constable Kirstenfeldt suggested that the IRT member arrest Kumanjayi at 5 o'clock the next morning. Constable Kirstenfeldt recalled that he contacted Senior Constable First Class Donaldson and asked him to come back to the police station as part of the plan on gathering information and intelligence as to the whereabouts of Kumanjayi that evening prior to his arrest the next morning.

At inquest Constable Kirstenfeldt accepted that he had been told about the early morning arrest plan so there we have it. Now, Kirstenfeldt was with Rolfe, so what we can reasonably infer what Kirstenfeldt heard, Rolfe heard.

Now, there were clearly questions posed and the exact atmosphere of what took place, the interaction involving Kirstenfeldt and Rolfe is not wholly clear, although there seems to have been some tension and some attitudinal shifts.

Constable Rolfe has said that Sergeant Frost mentioned she preferred that the IRT arrest Kumanjayi at about 5 o'clock because she wanted to have some time off, but if they did arrest him during the night they were to call her and she and local police would attend and handle his custody and processing.

So what you know from that is that Constable Rolfe plainly knew about the time, although he has rejected it as an arrest plan and referred to it as a timing issue. So that what those two have had to say. There is also Constable First Class Alefaio. Now, he overheard some of the briefing while he was completing paperwork in the computer. Can you talk about paperwork on a computer? Probably not - work on the computer.

Constable First Class Alefaio heard that he plan was to arrest Kumanjayi at 5:30. So there we have three sources of information. It is straightforward that there was a 5:30 arrest plan - after the 5 o'clock discussion amongst the relevant members.

Now, Mr Rolfe would have you believe that Sergeant Frost acquiesced in what essentially was a wholesale abandonment of the plan and that she authorised them to go and pursue intelligence and be prepared to arrest Kumanjayi on the spot wherever they thought he might be. That is just an utterly implausible assertion and it is not to Mr Rolfe's credit that he persists in promoting this proposition.

Why, we ask rhetorically, because of any interaction that took place at the station would Sergeant Frost just jettison her wish that there by public order policing and call it - dealing with call outs. Why would she abandon that the arrest take place at 5:30 in the morning? Rolfe says, "Well, we didn't know where he was going to be and anyway arresting someone at 5:30 isn't all that helpful anyway." It's an awful lot better than repeating Wednesday or doing what was done on the 9th. Nothing is (inaudible).

Why would she abandon having the involvement of Mr Alefaio? Why would she agree that it be done in such indecent haste - completely contrary to the essence of the plan? Why would she suddenly acquiesce in some strange form of intelligence gathering? It appears that she probably authorised them to pick him up if they saw him because that's probably going to be safe enough if they see him walking on one of the streets. But that is entirely different to barging into house and repeating the Wednesday.

And why would Sergeant Frost authorise and abandonment of a plan that had been authorised by superintendent Nobbs? It just makes no sense. It's not true. It's a deliberate attempt to mislead you.

Now, we know what happened. We know it from the very words that were used by Mr Rolfe. "We're here to grab Kumanjayi up". That's not intelligence gathering -

that's ham-fisted mission to arrest immediately. They walked out at 7 :05 - 7:06 and they were there within minutes - just a complete obverse of what was in the plan.

So why did Rolfe so flagrantly disobey what he had been told to do? That's where the text messages that you have allowed in, your Honour, before this inquest as insight. You see, Sergeant Frost had three major deficits for Mr Rolfe. First, she was a woman. And it's clear from the texts - we don't need to take you to the pictures and the pathetic sexist characterisations of Mr Rolfe. He is a misogynist. The next problem for Sergeant Frost, she was senior to him and by and large, Mr Rolfe had no respect for authority unless it was somebody who shared his own world view and was passive and acquiesced in whatever Mr Rolfe wanted.

Next, the third of the real deficits of Sergeant Frost from the perspective of Mr Rolfe, she was a bush copper. Now, we know what he thought about bush coppers - they're lazy and they're contemptible. They are the antipathies of what Mr Rolfe admires. They take their time - they establish relationships within a community. They don't rush into confrontations to do - as they put it - "cowboy shit". They don't regard policing as operating in the wild west. They take their time and they operate in the community in which they live. That is what Sergeant Frost did. That's what Sergeant Jolley did. That's what Senior Sergeant Schumaker does. It's what many of the really impressive officers who have appeared before you do and it's the way in which they live their policing.

There were ample insights provided by the text messages as to why Mr Rolfe might have been disinclined to obey. Sergeant Frost had to take upon herself the construction of an alternative plan because one of the other aspects of Mr Rolfe we can see readily enough is that he is a narcissist with grandiose ideas about his own abilities and his own knowledge and his own proficiency. He knows better than others.

He wanted to get the job done - get his man - get out of the bush - come back to what he regarded as the comparative civilisation of Alice Springs and the comforts there. Indeed to big note himself like he did on those various messages that he sent to people - preferably with videos. But he could do better than those characters Hand and Smith who he thought had made such a hash of what had taken place on the Wednesday. The people he'd derided as having capitulated in the face of the behaviour of Kumanjayi.

And what we know about Mr Rolfe's policing style is that it's impulsive, ill-considered, over-hasty and unjustifiably aggressive.

When we look back now with the wisdom that hindsight enables, we can see some of those characteristics and insubordination from the earliest days. What is Mr Rolfe most proud of and what is he angriest about before issues to do with Kumanjayi.

When he dived into the river to save somebody. As it turned out, it worked out all right, fortuitously for him and for others. But he'd been told not to do it for good

reason. It was dangerous. It was putting people's lives at risk. It could have gone hideously wrong.

But Mr Rolfe knew better. He wanted to be a hero. That's a consistent theme in Mr Rolfe's life. So in his mind, it was legitimate to ignore what he was told by senior officers and to do what he thought was best. Here we have it again with Sergeant Frost.

What we know about Mr Rolfe then, and this is consistent with the various other episodes in which he took people into custody, is that he is impulsive and ill-considered and regularly insubordinate. Again and again, he didn't bother to wear his body-worn camera. He didn't want to. Didn't need to. He's had a rationalisation for it; just didn't do it.

It's only when finally, Superintendent Reid brought him to task and said, "This has got to stop" that reluctantly presumably, he started to cooperate and do what was required of him. That's the only reason we've got body-worn footage from what occurred on the day.

So there are aspects to his personality which shed considerable light on what occurred in the late afternoon/early evening of 9 November; impulsive, arrogant, overly assertive, grandiose, narcissistic. The text messages shed considerable light on the mindset which would have led to his feeling able to disregard what a female experienced person in authority who'd worked in bush had told him to do.

First, it vindicates your decision to receive the evidence; and two, it legitimises your relying upon it when you make your findings, in our submission. And I haven't used the "R" word in this regard yet. I will now. It is absolutely reasonable for your Honour to reflect upon whether the other component in what took place on 9 November was racism.

We know that Rolfe was racist. We know that racist people usually translate their words into actions; that's just everyday experience. So was racism a factor in what happened on 9 November? In our submission, there is no clear evidence of this, and it ends up being wholly speculative as to whether it was.

He'd been engaged in many arrests before, and I will say more about that in a little while. He didn't say anything which indicated a particular racist attitude to Kumanjayi as an Aboriginal man. He didn't engage in particular behaviours which were unequivocally illustrious of his attitude toward First Nations people at Yuendumu.

What he did was to be a really poor policeman. He didn't plan. He didn't listen. He didn't think. He just burst into action as a hero in his own head. In our respectful submission, there is ample reason to conclude that his sexism is antipathy toward authority and his contempt for bush police played a role in why he did not comply with what was required of him by Sergeant Frost.

In respect of racism, it becomes speculative, and just because he was a racist, it doesn't necessarily mean that racism played a role in his conduct. What we are urging upon your Honour in this regard and in relation to the associated issue of institutional or systemic racism, is what we've come to expect from your Honour, the application of intellectual rigor to the issues; and these are hard issues and they're confronting ones.

We hope that your Honour may find the reasoning in the *Tanya Day* case from Acting State Coroner English of some assistance for you. Now, we've got copies of that. We'll hand one up to you and distribute some to parties so we're confident everyone knows the case.

I'm not going to take your Honour to specific passages in any detail. I will identify the sequence of things to you, so that your Honour can reflect on them in due course and see if you derive assistance from them. We say with respect to Acting State Coroner English, who is now a judge in the county court in Victoria, that this is a particularly sophisticated and thoughtful analysis of the evidence before her.

It was urged upon her that she make findings of institutional racism, and like you in a preliminary ruling - and we've provided you a copy of that - she agreed to receive evidence that might go the existence of such racism. In her 25 June 2019 ruling, she accepted the urging of the family to hear such evidence.

But at par 72, she rejected and I quote:

> "The inductive reasoning that concludes through analogy that because Aboriginal people are over-represented in public order offences, has a result of systemic racism. Ms Day was necessarily charged with a public drunkenness offence because of systemic racism."

She said this:

> "It is similar to say Ms Day's poor outcome in custody is consistent with the statistics that show the disproportionate effect of the law against public drunkenness, therefore her outcome was caused by systemic racism. It might be consistent with it, but it doesn't make it causal."

I won't labour this for the moment, your Honour, but you can see that what your sister coroner in Victoria was saying was that you've got to be very careful in how you utilise information, the assumptions you make and the inferences that you draw.

We urge your Honour to reflect on par 72 of her Honour's ruling. She returned to it in her substantive findings on 9 April 2020 and at par 110, she repeated comparable sentiments. Ultimately, she said this at pars 110 to 12:

> "I can only make my findings based on the evidence before the court. If I am satisfied to the relevant standard on the balance of probabilities. Further, any non-compliance with organisational policies or procedures does not

necessarily make the causal act or decision the result of unconscious bias and thus be illustrative of systemic racism."

So she's very conscious of reasoning from the specific to the general. Ultimately, what her Honour did was to make one finding at par 225 that it was open to her to draw the inference that a particular man's decision-making process was influenced by an unconscious bias in immediately deciding Ms Day was unruly, putting her in a higher category of response without considering other options.

She found in decision to define her as to unruly and to call for police rather than pursue other options had been influenced by her Aboriginality. Now, what your Honour can see in Acting State Coroner English's analysis is a very careful, restrained, intellectually rigorous analysis of the evidence and an engagement with whether - from the evidence it was proper for her to find racism on the part of a key player or racism more broadly in the sense of institutional or systemic racism. She compromised. She found one key player to have been subject to unconscious bias and she did not go further and impute that to any organisation.

What we submit to your Honour is that there are risks in inductive reasoning and drawing inferences over-readily from one man's insubordinate and grossly imprudent behaviour to be generous, and attributing that to an overall organisation. Now what you know is a result of the unedifying information to which you are now privy, is that Rolfe, through his text messages and some of his friends and colleagues, are racists. You know (inaudible) about TRG practices in particular around about 2015, '16 (inaudible).

But you also have been privy to some fine and impressive and non-racist people. And no one has been able to point to a particular general order or policy which is said to be indicative of systemic racism. Now these issues were canvassed in rheumatic heart disease cluster of inquests in Queensland with which your Honour will be familiar with the findings delivered by Coroner Merida Wallace(?) last year, I think it was. Very, very careful analysis of who the failure to provide sufficient health resources in northern Queensland; to identify and respond to basis Staphylococcus infections and thereby be able to take measure to avoid rheumatic heart disease - rheumatic heart fever and then the disease caused by damage from that disease. No finding of institutional racism there in a case where that was a genuine possibility. In the Dhu - D-H-U inquest - presided over by your equivalent in Western Australia, State Coroner Fogliani, findings were delivered on 15 December 2006.

Again, her Honour very carefully reviewed the provision of care to the deceased woman. Evidence was received about cultural awareness training completed by police. It was found there were deficiencies in training of police. Recommendations were made about cultural competency. Ms Dhu's family submitted that the approach taken to her by some of the doctors and in turn the treatment that she received was illustrative of institutional racism as described by an expert witness.

Her Honour, again, in very specific and careful findings did not find any of the relevant staff or police were motivated by conscious deliberations of racism in connection with their provision of treatment. That comment on it would be naïve to deny the existence of societal patterns that lead to assumptions being formed in relation to Aboriginal persons. It's a community wide issue and not until there is a seismic shift in the understanding that is extended toward the plight of Aboriginal persons, the risk of unfounded assumptions being made without conscious deliberation continues with the attendant risk of errors.

This is where she went to in the end at par 861, very tragically the social determinants of ill-health of Aboriginal persons were borne out in Ms Dhu's life and in the sequence of events that led to her untimely death.

Now you've heard this morning from my learned friend for the Health Department about the gravity of the making of findings about racism as a causative factor in relation to death or as being one of the circumstances of death. We echo the helpful submissions from my learned friend. To reiterate because Mr Rolfe was racist doesn't mean his racism played a role in his discharge of his firearm. Doesn't necessarily mean that it played a role in his decision to go out searching for his man. And it's not properly to be attributed to a broader system or institution.

We respectfully submit that the court should be circumspect as the court has been in Queensland and Victoria and Western Australia in to readily embracing the emotive terminology of systemic racism. It's a phenomenon. It is a reality. There are occasions where it would be entirely appropriate for you to utilise such terminology. Our respectful submission is that this is not one of those and that a proper appreciation of what led to the delinquent conduct of Mr Rolfe is to be found in other aspects of his personality, his policing style and his attitudes. What we respectfully say is that it is not open to you on the evidence to find that racism figures amongst such considerations or that it is appropriate or open to make a finding of institutional racism.

We observe as well in a way comparable to what was raised by Mr Hutton, that it is important not to characterise with a highly pejorative and denigratory term an institution which is like the department that Mr Hutton represents, and like the Northern Territory Police Force making bona fide attempts to do better. We'll say more to you about the initiatives of Ms Liddle in due course. But it has particular resonance for the Northern Territory Police Force because they are doing what they can to move in the direction of a 30 percent representation of Indigenous people.

There has been terrible publicity, perhaps deservedly, of issues recently arising from the TRG gatherings and - and the text messages that has caused discomfort to put it very mildly amongst the Indigenous employees of Northern Territory Police Force and the earnest wish of the Commissioner is to attract more not fewer Aboriginal people to be ALOs, ACPOs and Constables and to retain them and to maintain some morale. To have your Honour poke what occurred associated with Kumanjayi's death in the term institutional racism would be very unhelpful.

So what then of Kumanjayi's - sorry, what then of Mr Rolfe's history of violence?

Would it be convenient to stop for a while now your Honour?

THE CORONER: Yes, we'll take the lunch break but I don't think there are time constraints this afternoon.

A PERSON UNKNOWN: Your Honour could I respectfully seek leave to be excused after the lunch break?

THE CORONER: Yes, thanks for being here.

We'll adjourn.

ADJOURNED

RESUMED

THE CORONER: Dr Freckelton?

MR FRECKELTON: Thank your Honour. We move now to our submissions in relation to what your Honour can find from our perspective in relation to Mr Rolfe's use of force and what inferences you can draw that might be relevant to what occurred on 9 November.

The Northern Territory Police Force accepts that Mr Rolfe used excessive force on four occasions. We accept that there are entirely understandable positions that he may have used excessive force on others. And what we say is that judgements in relation to such matters are contextual and sometimes difficult.

From a perspective of the Force, we say that the four occasions were Araluen Park, Master TG, Albert Bailey and Tyson Woods. (Inaudible) or if your Honour accepts something broadly similar to it, this may be capable of establishing that Constable Rolfe had a general propensity to use excessive force in arrest of Indigenous suspects on some occasions. However, the difficulty comes in extrapolating from those occasions to what occurred in relation to Kumanjayi. Now as your Honour knows our position is that you should not be intruding upon what actually occurred with the firing of shots. So the question is then, what you use you can make of the inappropriate occasions in which Constable Rolfe used force against other persons in relation to what he did up to the point when he discharged his firearm on 9 November.

(Inaudible) immediately is that the arrest of Kumanjayi was markedly different to those other occasions not least because Kumanjayi to Mr Rolfe's knowledge had threatened (inaudible) three days before. So real care needs to be used in extrapolating from those other occasions in doing inferences that are pertinent to his circumstances of death. We do extensive submissions and you and everyone else in the courtroom will be relieved to hear that we're not going to engage with those in any depth. What we have to say is at par 298 following our submissions.

We submit that it is important not to use knowledge that you are privy to your Honour that was not known to the Northern Territory Police Force in the sense of allegations having proceeded to finality in investigation and the findings having therefore been arrived at in terms of force having been used in an excessive way. Some general matters can be identified.

Firstly, Mr Rolfe did not have a record of using force on a particularly high number of occasions when viewed in a context of his discharge of general duties in Alice Springs. He was identified by Sergeant Barram to have used force on 46 occasions between his first operational shift at the end of 2016 and 9 November 2019. Now there might be some room to argue of that - that number. It may be a little more or it might be a little bit less. But assuming that that is broadly right, so what your Honour knows from evidence before you, is that Mr Rolfe did not appear at the top of analysis of a use of force used by members during that period. It shows

that he used force about once a month or on approximately 15 occasions a year while working in the front line in Alice Springs.

It might be a matter of discomfort for all of us that police members used force with such regularity in the Alice Springs area but with respect that's not really the point. The point is that in terms of his propensity to use force which he was not in the upper echelon.

Next it's important not to conflate the use of force with the use of excessive force. They are quite different categories. Sergeant Barram identified five of those 46 occasions as being an excessive use of force. They were Bojangles, Malcolm Ryder, Araluen Park, Todd Tavern and Albert Bailey. Ultimately after their investigations, the Professional Standard Command PSC, determined that only two of those were excessive. Then later on the TG matter, Master TG, (inaudible) and the Tyson Woods were reviewed and found to be excessive.

Next what can be identified is that the use of force in respect of those four matters was really quite different one from another. Only one the Albert Bailey could be described as a serious excessive use of force case and it's not yet been finally determined. It happened when Constable Rolfe was having trouble sleeping at around the time that he was prescribed medication. We don't put that as mitigation in any way but we simply observe that that seems to have been its context. But the other two, Araluen Park and Master TG did not involve specific injuries and they fall at a lower end in terms of the excessive use of force, distasteful. Master TG and Araluen Park ones were on any reasonable analysis.

Next, none of the complaints against Mr Rolfe or investigations into him resulted in outcomes pursuant to part 4 of the Police Administration Act. The other failure matters still has not been finally determined, it is unresolved pending resolution of Mr Rolfe's appeal against his dismissal, which is yet to be finalised.

Araluen Park and Master TG incident resulted in provision of remedial advice.

Next, none of those findings about his use of force had been made prior to 9 November 2019. And that is really important because - it's a pity Mr Aust is not here - but Mr Rolfe was entitled to the presumption of innocence in relation to matters that were unresolved as yet.

And moreover, where matters were still subject to investigation it wasn't appropriate for action to be taken in relation to his service or a form of his service prior to that resolution.

In 2022, nearly three years later, the Professional Standards Command determined that excessive force had been used in the Araluen Park Master TG and other failure matters. Constable Rolfe was charged with a serious breach of discipline in respect to Mr Bailey and the Tyson Woods incident, of course, arose in the course of this inquest.

The only formal feedback that he got in relation to use of force incidents was a request that he respond to the Professional Standards Command. His assertion - and it does not seem to be contradicted by evidence, is that he never heard anyone say that his methods were unsatisfactory, excessive or unwarranted.

Now, what they say, that he should have been being told that but then again, while we accept that better supervision, especially from some persons - and I will say more about that in a while - should have been given. There is only so much a supervisor can do until there is proper resolution of an allegation.

So at the end of that, what one can say is that the complaints about Mr Rolfe may be capable of establishing he had a propensity or tendency to use force on some occasions but that leaves things at a very high level of generality and that does not enable inferences to be drawn about his reasons for motivations in using force against Kumanjayi Walker. (Inaudible).

In none of the circumstances to which I have made reference was the offender armed or did they strike or cause injury to him. Did he feel threatened or was he of the view that he needed to protect a colleague from a threat. He didn't use a firearm on any of those cases. Kumanjayi, of course, was not running away. So to suggest that Mr Rolfe had a propensity to use excessive force against Aboriginal people, that was known to the police force and that he continued unchecked to engage in that pattern of behaviour which culminated in the death of Kumanjayi lacks cogency and rigour and is not supported by the evidence that you have. It would be, in our submission, wrong to make a finding of that nature.

I would like to say just a few things about the use of dogs. General purpose dogs, also known as "patrol dogs" are a tactical non-lethal use of force option. They are well regulated. Members utilising a patrol dog are obliged to comply with use of force policies most particularly including for requirement to use minimal force.

They have to apply the ten operational safety principles. They have to complete a use of force case note entry when a dog is used to apply any force to a person and most assuredly if any injury is occasioned.

They are used absolutely every day in the Northern Territory as they are elsewhere in Australia. They are used in urban, regional and remote settings, generally in the context of providing operational assistance to other police.

We accept that the use or presence of a police dog can be intimidating or frightening for members of the community but that is the deterrent aspect to their operation which actually makes them useful and their very purpose is to avoid other worse forms of force.

It is very infrequent indeed that dogs actually apply force to any individuals. This is an emotive subject but again, it needs to be looked at with rigour and care. Usually the mere presence of a dog is enough to achieve the objective. Usually they are not allowed off their leash at all.

A dog is a low-level tactical option. Dogs can and do cause injuries on rare occasions but it is very low and the alternatives can and do cause injuries as well - batons, tazers and similar. Usually a police dog remains in the van of the handler until it is deemed appropriate for the dog to alight from the vehicle.

As Senior Constable First Class Donaldson said:

> "Half the time the dog doesn't even get out of the car - even out of the vehicle - the dog is not released or allowed off the lead unless circumstances require it."

A police dog barks on command. It's trained not to bite unless explicitly permitted to do so. It is only deployed after a handler gives multiple opportunities to a suspect to surrender and warns them that the dog will be released. If the command to bite is given, the dog is trained to track the person and then bit and hold to minimise the risk of injury until the handler can be in close proximity to the person.

Your Honour has received data about the use of dogs. Senior Constable First Class Donaldson stated that, "A percentage of all deployments" - namely when the dog comes out of the police vehicle - resulting in bites would be less than 1 per cent.

Between 2019 and 2021 there were just over five and-a-half thousand deployments of a police dog. 5676, to be specific but only on 45 occasions was the dog used to apply force in any active way. Those 45 occasions, to put it in context, are .008 percent of the use of force by Northern Territory police members during that time. So that's 45 occasions when a dog was used an injury was caused on 18 occasions. Most of those were minor lacerations, grazes, scratches and abrasions.

Now, we concede, of course, the dog handler dogs must be used as little as can be orchestrated. Wherever that is, whoever the suspects are, but it is erroneous again to speak in terms of patrol dogs being used against or on a person. They are used for particular purposes that are kept to an absolute minimum, and they constitute a tactical option that is likely - and does - involve less harm for suspects than other options.

The issue of militarisation has been raised by our learned friends as well. We have addressed that in some detail and we don't propose to do it at length here.

So the raising of the issue by our learned friend has constituted a helpful opportunity to reflect on policing style and to consider measure that should be adopted to ensure that there is a clear delineation between military service and policing service, especially since in the order of a quarter of persons recruited to the Northern Territory Police Force have come from the military or other policing background in recent years.

There is no doubt that militarisation of policing is an important topic of theoretical criminological and policing scholarship. It also has the potential to have practical ramifications.

Ultimately what we submit to your Honour is that it has minimal relevance, and application to this inquest both by reason of the scope of inquest, the nature and quality of the evidence said to underpin the arguments about militarisation as a matter of principle, including from Emeritus Professor McCullough and the tangential nature of the link between any militaristic philosophies and practices on the one hand and then death of Kumanjayi on another.

It is not enough to say Kirstenfeldt and Rolfe and both served in the military. They used some military-style words and you can pardon one from thinking that some of their behaviour had flavours of the military about it when they were in the vicinity of Houses 577 and 511.

That doesn't mean that that training had an impact on what happened inside the room - House 511. For a start, because (inaudible) wasn't in there. We say that the compelling explanation for what ensued had another genesis in the background and attitudes and unpreparedness to comply with instructions for Mr Rolfe.

The fact that the IRT existed, that it had particular weapons, again is not to the point. It is not indicative of the Northern Territory Police Force become militarised and it certainly doesn't go to whether militarisation played a role in Kumanjayi's death.

So, in our submission, rely on what's in writing. And the level of force used by Constable Rolfe is not in the zone into which your Honour should go. But even were it, the fact Constable Rolfe had military experience sheds little light on what occurred.

Now, the Northern Territory Police Force have done something about the issue which has been raised and we genuinely say it has been useful to reflect upon it, because military service is fundamentally different from what is expected of policing, especially in the community.

And we will emphasise, in a few minutes time, the new training that exists for all police who are recruited to think about the differences and to focus upon what the core of their responsibility is in interacting with the community and not to enter into any interactions with what's been described as a "warrior mentality".

That forms part of the training at the very beginning of what is learned by those recruited to the Northern Territory Police Force. And to that extent, what's taken place in this Inquest, thanks to my learned friends representing Parumpurru has been, we think, a really useful contribution. It has enhanced the quality of the training.

I propose to say very little about the issue of carriage of guns in community. This is an issue upon which we have to agree to disagree with our friends, especially from Parumpurru. We hear and empathise with the concerns raised. We note that their arguments have been put specifically in relation to Yuendumu. And we do appreciate that there are some features specific to the tragic history with Yuendumu and the vicinity dating back to the Coniston massacre.

The Northern Territory Police Force remains of the view, however, that in discharging ordinary policing duties, it is necessary for police in Yuendumu, like everywhere else in Australia, to have the ordinary accoutrements. The real issue is what is done with them. That doesn't mean carrying rifles. That's a separate issue altogether.

But in terms of Glock pistols, we say it is necessary for police to be able to respond to protect members of the community or to protect themselves in circumstances which can arise completely unpredictably. The real issue is when they get some controls over them, plus the supervision of such matters and the training in respect of them.

Your Honour has evidence from Deputy Commissioner Dole about this. You have evidence form Deputy Commissioner Smalpage as well. We have looked at ways to find a middle ground and have had constructive discussions with my learned friends about this, and those are not concluded.

But what we can say, is that there is a possibility for mutual respect agreements to be developed around carriage and use of guns in community and that on the agenda certainly can be refraining from carrying guns in a variety of circumstances. So that's intended as a message of goodwill to Parumpurru and to say explicitly, the issue is open to further discussion.

I'll move now to events after the death of Kumanjayi. We say in that regard too that rigor is required in reflecting on what took place and considering what findings properly should be made. It's always difficult when it's a matter that was instituted in the aftermath of a death.

But consistent with our position of not arguing about technicalities, we want to engage with what occurred. We have conceded already that some of what occurred in the aftermath of Kumanjayi's death is unsatisfactory and we unequivocally apologise for it.

Let me explain just a little further. After the three shots had been discharged, there was a very complex situation with the stress, of course, being experienced and ventilated by persons in the immediate vicinity and much fear, no doubt.

The first and most important thing was to get Kumanjayi what medical attention could be provided to him as fast as possible. We concede that he should not have been dragged, but dragging in this case is not the kind of demeaning dragging that this court and others have had reason to look at.

And unlike those cases, it was a mechanism for getting him as fast as possible into the van to get him back to the station, not to sterile circumstances, but to circumstances where what could be done could be provide by way of assistance and what limited facilities that were at the police station could be utilised.

In our submission, it would have been inappropriate to have tried to render medical assistance at the scene. And the key thing was to remove him from the vicinity as fast as possible. It probably could have been done better by lifting and carrying him, rather than having part of his body being dragged and for that, an apology has been rendered.

Now, at the police station, there are two issues. The first is the failure to invite members of his family to be present when he was in extremis and the provision of information about what had happened upon his death. Associated with that is the (inaudible).

This is to be the subject of very extensive reflection by the Northern Territory Police Force. There was a genuine concern about the risk of violence erupting. Now, we've seen some footage and we make no criticism of this, what we have seen is undoubtedly not everything that occurred and that footage shows a restrained response by a significant number of people outside the police compound and the restraint is (inaudible) and it is to the credit of everyone involved, no doubt facilitated by ACPO Williams and his father and community leaders.

Nonetheless, Ms Fernandez-Brown did remove weapons from a number of community members. Rocks were thrown. Senior ACPO Williams advised Sergeant Frost and Acting Assistant Commissioner Wurst that police were in danger and that community members might try to hurt police. He told Constable First Class Alefaio to lock the door of the police station.

According to Warren Williams, some community members wanted to burn the police station down and a fire was lit and there was limited information about exactly what was taking place. There had been very substantial civil disturbance in Yuendemu in 2010. Your Honour has heard evidence about occasions in other communities where action was taken against police stations and where there were eruptions of violence.

Now, I want to be very clear about this. This is not an attempt to stereotype or legitimise reactions from indigenous people in a tense situation. It's to say that the lived experience of relevant persons led them to be deeply and genuinely apprehensive and they made their decisions, we submit, in good faith in that context; with the wisdom of comfort and hindsight in this courtroom, perhaps other things, but we weren't there. We didn't have those fears. It's not reasonable to assert that the decisions to which I have adverted were based on racial bias or ignorance or stereotyping.

Notably too, in the course of the ambulance conveying Mr Rolfe to the airport and then returning, significant rocks were thrown and injuries were inflicted on personnel. Mr Rolfe did need to be removed. It was prudent to get him away from the scene and it was necessary to bring other personnel in to ensure that there was support in case anything adverse did occur. It should not have been done using an ambulance, and to the extent that there was deception, and there was, it should not have happened and the Northern Territory Police Force apologises to the health personnel and to the community for it.

Senior ACPO Williams was not told of the death of Kumanjayi. That was deliberate because to have told him and asked him to continue his work with the community and to have him not tell his relatives and friends in the community would have placed him in an impossible conflict of interest.

The issues to do with provision of mouth-to-mouth assistance and general provision of care, we submit, have no substance. Energetic, appropriate and commendable assistance were provided to Kumanjayi and attempts were made to give him some comfort, it's (inaudible) of course, to his close relations being present. The reason that they were not invited in was associated with the fear of what results that could engender, and also it's a very difficult situation that on the floor of the police station is a young man bleeding out and it's rare to bring close relatives in to the dying throes of a person in such abject and distressing circumstances to see it all.

Now, perhaps that was the wrong thing but that was part of the thinking and, in our respectful submission, it was not entirely unreasonable. It wasn't cruel, it wasn't racist. It was what is usually done in any hospital in Darwin, Alice or anywhere else. So to attribute that to racism would be unreasonable and unfair. Professor Reid, in fact, concluded that the actions of the police in those circumstances were appropriate.

The proposition that Sergeant Frost, as a former, no longer registered, nurse should have been directly involved is unreasonable. Whatever fault one might attribute to Mr Kirstenfeldt and to Mr Rolfe, they had both done extensive battle context training in relation to provision of healthcare to persons, and in fact their training was more recent and it was absolutely apposite to the situation that presented, and whatever else one might say about their conduct, in our respectful submission, what they did was entirely proper and commendable at that stage.

(inaudible) TRG personnel came to Yuendemu and at least two persons carried long arms to guard the scene at the red house. That should not have happened. There was no proper basis for it. The community was calm. It was defensive, it was distressing. It compounded whatever distress would have been being experienced by members of the community. It resulted from poor supervision and a misunderstanding of what should and shouldn't be done. It should not have happened. That's no justification but it's not an example of racism. It's an example of unthinking policing.

They had been permitted to bring their weapons and that was appropriate. What they should have done is to have left them at the police station, not take them into the community, and again that is something for which an apology has been rendered. Consideration has been given to provision of specific guidance about when such arms should ever be visible to members of the public when any form of intervention by any police takes place. That's something that's been reflected upon.

I move to the last phase of what we have to say to your Honour and that is in relation to what has happened between 9 November and the present. It is now some five years since the tragic passing of Kumanjayi and much has been done. There is a completely different management team in the police force. There are major changes in staffing. Constable Rolfe has been dismissed. The IRT has been suspended and then disbanded and there is a commitment not to reconstitute it.

There are major reforms in almost every area of policing as a result of what occurred. These have extended to processes of recruitment and new personnel, Aboriginal and non-Aboriginal, training and ongoing education of members, acquisition and enhancement of cultural awareness, policies including in relation to the use of force, (inaudible) the de-escalation in foreseeably risky situations, supervision and oversight of police officers, handling of complaints, undertaking of disciplinary actions against police who have breached their obligations, investigation into deaths, communications with next of kin, managing of fatigue and other conditions which have the potential to impact upon policing. The Commissioner gave the speech that has been referred to at Gan'na in relation to relationships with the First Nations people of the Northern Territory.

I won't say much about the abolition of the IRT. It has been abolished. There is no intention to replace it under any other name or in any form.

I referred to cultural awareness training. Your Honour has heard quite a bit of evidence about that, the creation of community resilience and engagement command (inaudible) that was set up in October 2020 to strengthen relationships between the agency and Aboriginal communities. It's really important. It marks a complete reconceptualisation of how new members of the police force are being trained. It extends to cultural awareness but also trauma information in respect of people who have experienced generational trauma. This involves, of course, the use of ALOs. As of two weeks ago there were 91 ALOs working across the Northern Territory. Three have progressed to working as ACPOs, 17 applications to transition to constable from ACPO are currently in the system. What we contend to your Honour is that this is indicative of genuine community engagement. And those are also a very important source of cultural knowledge for people in their early stages in the police force - and beyond and it is fundamental that officers engage with ALOs, ACPOS where they exist and elders in the relevant area so that they can learn and so that they can integrate into the community.

Your Honour knows too about the induction manuals. We saw the first one which had been produced for Yuendumu and that functions as a template for the rest of the Northern Territory and (inaudible) assisting in the production of the induction

manuals. Some are better than others. Some are more extensive than others. Some have my hyperlinks to relevant things than others but it's a start on the road to assisting to understand more about the local area and how they can learn (inaudible).

You know too about the cultural awareness training at the college, in the past that training was very limited and unsatisfactory but CREC has developed a three day course. Our learned friend would like weeks of it and the Northern Territory Police Force would love to provide weeks of training but financially that is just not possible. It's a start. It may well be that there can be more soon but of course, you only learn so much in any context at college or at university. If your Honour thinks back a few years ago to when you finished at university you had some useful knowledge and skills to start your work as a lawyer but so much is learned in the period after that, under supervision from people learned and experienced in the profession.

So the role for the college is to provide that initial sensitisation and set of values and to lay a basis for what can follow and that's what CREC is endeavouring to do. It may well be able to do more in due course. It's been the subject of extensive evidence from Senior Constable Wallace and Sergeant Matthew Allen.

You know about the instructions that are given in general terms, including input from the Aboriginal Interpreter service, the multicultural council of the Northern Territory, the Northern Land Council, cross-cultural consultants and so on, as well as from ALOs and ACPOs who are increasingly being integrated into CREC to transfer their information with a practical edge to it, to recruits.

Since July of 2021 Constable ACPO and auxiliary recruits all received culturally responsive trauma informed care modules during their time at the college.

Now, I am hoping she is still there? Where is she? Yes, she is Leanne Liddle.

Now, Leanne Liddle is not an experiment and she is not a panacea. Leanne Little is a remarkable person. You know quite a bit about her already. She has been the Director of the Aboriginal Justice Unit, she has been a principal policy officer, she has been a lecturer at Flinders University, she has been a manager of Aboriginal Affairs and Reconciliation in the Department of the Premier and Cabinet. She has held multiple high ranking positions in South Australia and the Northern Territory and she is an Arrernte woman, a traditional owner, she was awarded the Most Influential Australian Lawyer Award and Changemaker - as a changemaker. She was the Northern Territory Australian of the Year - the list goes on.

She is not a token effect, she has been brought in by the Commissioner to do a job and she is expected to do it. However, she is not an experiment, she is not a panacea and she is not a magic worker either. She has been in place for five months now. She has already initiated a range of constructive things. She is working on anti-racism policies and structures, it's called the anti-racism strategy for the Northern Territory Police Force. That involves drawing on and working with

others including the Central Land Council and consultants. It's very important that she work with the Northern Territory Police Association so they are brough with the whole process and she works as part of the Senior Executive of the Northern Territory Police service.

Her work is in early stages but looking very promising and she has the full support of not just the Commissioner but of the whole executive. We can't say to you "Here is a list of things which she has accomplished" yet but that would be asking too much after such a short time.

Her strategy is a really important piece of work. It is intended to improve employment and promotional opportunities for Aboriginal members. It is going to have a component about the exercise of discretion. As the head of CREC she is going to be working to consolidate improvements in relation to recruiting including trying to elicit issues which might be problematic in attitudes or propensities in persons such as Mr Rolfe and she is working to ensure that there is ongoing training for members of the force.

She has arranged for Professor David Hollingsworth, who is a professor in Aboriginal Studies at the University of the Sunshine Coast to deliver anti-racism policy training to the whole executive, to the Professional Standards Command, to the TRG and to Territory Safety Division, that is going to be happening in December and January, so just weeks away.

These efforts, it is hoped, will supplement others to identify and eliminate racism. I reiterate any form of racism is not tolerated in the Northern Territory Police Force and under the leadership of Commissioner Murphy appropriate measures will be taken against anyone who is found to have engaged in conduct or words which are unsatisfactory. Recruits have been removed from their training who have breached the expectations of the, just in recent times.

I have referred to the commitment to recruiting and promoting Aboriginal staff. The Australian Institute of Police Management has been approached to design and deliver an Aboriginal Leadership course and I have referred to the work being done with ALOs and ACPOs to assist transition into the constabulary positions.

I move now to issues of change in leadership and culture. What has emerged in the course of this inquest is that there roles of sergeants and senior sergeants are particularly influential in passing on culture - not indigenous culture - but on passing on policing culture to junior officers.

If there is a problem with sergeants and senior sergeants it is likely to be passed on generationally to those whom they supervise. The previous Commissioner met with a large proportion of the sergeants in the Northern Territory in relation to what he required of them in terms of leadership and behavioural expectations. That was a major initiative. It mean his sitting down with every single one of them and saying to them firmly, "This is what is required of you. If you can't do it you need to think about

doing something else.  It is core to what is required of you as a supervisor of junior officers."

During 2020 and 2021 Deputy Commissioner Smalpage was involved in it as well and between Deputy Commissioner Smalpage and Deputy Commissioner Murphy as he then was, they met personally with each member of the rank of senior sergeant, superintendent, commander and assistant commissioner in relation to those matters.  That is a major initiative.  These were not only chit-chats, they were serious, focussed meetings designed to bring home what was required of those with supervisory responsibilities.

Commander Dole as he then was - now Deputy Commissioner Dole - also engaged in a process of meeting with all members of sergeant rank in relation to these matters.

A further aspect of the attempt to enhance the performance of sergeants - because that was identified in part as a result of this inquest, as an area that required change and enhancement in skills and performance.  A sergeant development course was developed covering issues that are diverse that included rank responsibilities, auditing, discipline body-worn video procedures, compliance with orders, briefing culture, risk assessments and so on.

It is a weeklong course.  It was initially offered to substantive sergeants and then to remote sergeants, because as your Honour will recall, senior constables often function as remote sergeants in remote locations.  It has now been extended to acting sergeants and open to senior or first-class constables as an opportunity for them to advance their skills and their aspirations to move higher in the police force.

There have been 15 such courses attended by 274 participants delivered during 2023 and 2024, and two further courses are scheduled for the weeks leading up to Christmas.  Now, we've heard what's been said today and what one can say is that it's evident that Rolfe did not receive the guidance and mentoring that might have assisted him.

Issues have been raised in respect of the supervision and contributions by Sergeant Kirkby and Sergeant Bauwens in this regard.  Now, having regard to interactions between Mr Rolfe and Sergeant Bauwens, we can see Mr Rolfe talking about bush cops fucking up as usual.  And Mr Bauwens saying, "Bush crims aren't used to people going after them."

Whether or not this was a situation of direct supervision, Mr Bauwens was a person to whom it is likely that Mr Rolfe looked up to and respected because of his role in the IRT, his background in the TRG and his general role in the police force.

But if that's the kind of role modelling that Mr Rolfe was getting, it's perhaps not so surprising that he developed problematic attitudes, although it's likely that many of them were present already.  Now, that wasn't known until (inaudible) your Honour's ruling did these messages become available.

Moving to Mr Kirkby, this is 426 to 429, we can see him raising the question to Mr Rolfe, “How does bush time put your application ahead? It doesn’t.” “I know”, says Rolfe, “Fucken idiots prioritising lads that go out bush so that they can be lazy and do no work.” There you’ve got the attitude of Mr Rolfe, but more importantly, you’ve got it being supported by a senior officer to him.

And your Honour will recall from messages 430 and 431 of Mr Kirkby saying, “Sorry about the stress caused by losing my shit the other night.” Rolfe saying, “Always ready to make my camera face the other way and be a dramatic cunt for the film.” What Rolfe said is problematic, but the role of his more senior officer is especially problematic.

Shortly afterwards at number 464, “People go out bush because they’re fucken lazy. Order of preference is ‘blacks, chicks, gays and lazy fucks.’” That’s the kind of guidance and role modelling the Northern Territory Police Force does not need.

It is unfortunately the kind of thing that undoubtedly sometimes happens quietly in the background in what has so often been described as “private conversations”. We now know about it thanks to your Honour’s permission to have this literature made apparent. The challenge is to know what to make of it.

We know more about Mr Rolfe really thought and we know more about what the relevant personnel, Sergeant Bauwens and Sergeant Kirkby thought, but the issue for the Northern Territory Police Force is what to do to try to eradicate these kinds of values.

And your Honour, there’s no magic solution to this. People are burnt out and embittered, alienated, judgmental about some of their colleagues, they’re probably not going to communicate that to more senior personnel. Just like Mr Smalpage and others said, they hadn’t heard people using racist language, and you heard that from one person after another, because they knew not to do it in front of senior officers.

So it’s a process of attitudinal (inaudible) and instilling of values and communicating a culture of unpreparedness to tolerate that kind of thinking, but it’s a subtle difficult process that has to bring people with it, not alienate them, and to educate them about what is problematic about it, what’s unreasonable about it and what people need to do if they are burnt out to deal with their issues so that they can function better as police officers.

Part of that is sitting down and talking to the relevant persons, even if nothing is known about what they really think, and that’s why we say these sessions from the very most senior persons in the force sitting with sergeants and senior sergeants have really been a constructive contribution in that regard. We’re not suggesting that they're a panacea either.

I'll talk to you about the Australian Institute of Policing Management Leadership training. Sergeants have attended such training, the division of the senior officers and less senior at Alice Springs has changed.

Constant changes are being made to recruitment processes which, just to summarise very briefly, involve a new company (inaudible) undertaking psychometric assessments, new processes where anything comes out part the way through, if it's problematic or concerning.

Free form interviews taking place with recruits to try to draw out what might be their values in ways which are not dependent upon their giving answers which they think would assist them in psychometric tests, processes for obtaining their ADF medical records, processes for eliminating them from service, if there is any kind of a serious infringement which comes to light.

Requirements to make them do statements which would render them able to be prosecuted under the *Criminal Code* or the *Oaths, Affirmations and Declarations Act*, a range of new guidelines addressing the obligation to provide criminal histories of the kind that Mr Rolfe chose not to provide.

Reference checks are now being done in a more rigorous way rather than to whoever is nominated in the way that occurred with Mr Rolfe. So the recruitment processes have been fundamentally changed since the days of Mr Rolfe, learning form the errors that were made in that regard, and they are now being supervised by Ms Liddle to endeavour to incorporate within them as many measures as are possible to identify and elicit problematic attitudes.

She has been sitting in senior sergeant interviews herself over the last several weeks and has devised some interesting questions, I won't say what they are in court - - -

THE CORONER: No.

MR FRECKELTON: - - - that are trying to draw out from people via a case scenario, it's really quite clever involving an Aboriginal person, what kind of response they have. And what's she's found it that a number of the answers have been really problematic and that's enabled identification of issues and potential follow up with the persons involved to educate them and to try to get them thinking in a deeper way about the cultural issues.

Changes have been made too to use of force philosophy and training. I won't go into it in detail. It's all our submissions at 1216 and following. But in short, there's a new general order in relation to such matters that has been the subject of considerable consultation.

There are now six steps which must be considered in any risk assessment process and members are required to think carefully about intended actions when they're about to become involved in a situation which may necessitate a

confrontation. Your Honour can see the application of that to a scenario such as that involving Kumanjayi.

The tactical operations model has been fundamentally changed. We have a pictorial illustration of what is required in terms of thinking (inaudible) which emphasise safety first assessment, reassessment communication and the absolute heart of it is de-escalation in all circumstances.

That forms part of the package that is now delivered to recruits at the training college. An attempt has been made to create a new focus and understanding of these sorts of issues and it's as part of that that there is a module that particularly counterpoints military experience and policing experience; drawing out what the differences are and enabling discussion about what it is about policing that is fundamentally different to other forms of service, and this seems to have been going well. It's been administered now to four constable courses, three accelerated recruit courses and five police auxiliary courses.

What is proposed, we can inform your Honour, is this, that there's going to be a loop intruded into training so that there's a reversion to that issue late in the training to enable constables, or recruits especially, to talk about what they've learned in the course of their training that's relevant to those relevant differences. So it's to bring it back, emphasise it further and really integrate it into their development of understanding of what is required of them as persons providing services in the community.

In terms of use of force reviews, now, your Honour has been told about senior sergeants being required to review each and very use of force, and the definition of use of force is low level. So every time anybody does anything of any significance in relation to use of force, senior sergeants now have to look at it. There's an extra independent auditing process that's been in place since August 2022, and it's resulted in referrals to the Professional Standards Command for a number of persons.

There's also now a mechanism for identifying trends and that's particularly apposite, of course, to a scenario involving someone like Mr Rolfe where there might be a series of concerns raised, matters are being investigated, no final resolution, but this enables the Northern Territory Police Force Risk Management and Internal Audit Division to conduct analyses and to identify trends and patterns so that something can be done about it quickly and to spot trends more broadly utilising SerPro (inaudible).

We've spoken about supervisor responsibilities. I won't say anything further about that. Measures are being enhanced. Efforts are being made to reinvigorate its peer support program which is going to be relaunched next year. A chaplain and social worker are now permanently based in Alice Springs to provide support to members in the southern region. There's an independent review of support and wellbeing that has taken place and its strategy was approved by government in May 2023 and it's in the process of full implementation.

There's an early intervention policy as well, to try to identify and manage risk factors impacting upon members' wellbeing and thereafter their performance, and the idea again is to enable early engagement with persons who may be showing signs of struggling in some way. It's not intended to be punitive but to offer support, and that's part of a general approach in terms of management of issues prior to they're becoming complaints and then after they become complaints because someone reports something untoward being done.

There's a fatigue management process which has resulted in a policy which has been finalised and is now in force as of today. Attempts are being made to undertake long-term work in relation to resource allocation and staffing. This is an issue that's been raised by the Northern Territory Police Association. They're being listened to at the highest levels in the police force.

Work is being done to try to improve conditions for those in remote areas in every sense, both physical ones and also their responsibilities and the breaks that they get from their responsibilities, recognising how (inaudible) that kind of work is, and that's going to be the subject of ongoing discussion, for instance, with the Association.

Another initiative is the role of the territory duties superintendent to oversee all serious or significant incidents occurring in the Northern Territory outside business hours, and that provides another mechanism for intruding sophisticated, more experienced risk management strategies and decision making. It's a dedicated, permanent role, performed 24 hours a day every day and it's supported by the territory intelligence section. There are five members who occupy the role of GDS but there's a dedicated email so that when anything comes in, it's seen by whoever is functioning as the (inaudible) duty superintendent at the time.

I've made brief reference to Professional Standards Command. It is accepted that the responsiveness, in terms of timeliness and quality, left something to be desired in relation to a number of matters involving Mr Rolfe. Efforts are being made to improve that. Your Honour knows that the Galiat review was undertaken externally. There's been a commitment to implement that. Flow charts have been developed, template forms have been reviewed and updated, a memorandum of understanding has been entered into with NAAJA in relation to enabling footage to be viewed before formal complaints are made to (inaudible) is receiving extra training in relation to cultural matters.

They've been instructed formally to consider complaints comprehensively and to engage with the Ombudsman's office to discuss matters of concern and progression. There has been a resumption of the use of s 14C for matters that are not so serious.

There's a Prosecutions Review Panel which would have dealt with issues arising from the concerns articulated by Judge Orchus(?) and that is called the Prosecutions Review Panel Meeting which takes place, as you would think, each month to review what a termed failed prosecutions, but that means acquittals and withdrawals and

cases where an issue has been identified which resulted in an issue, and today's comments, such as those from Judge Orchus, would be reviewed immediately by the Prosecutions Review Panel providing an opportunity for immediate response, for instance, referral to Professional Standards Command to look again at what took place.

The attempt has been made to implement, if I can call it, the spirit of Galiat which is to engage the confidence of the police force while taking firm and decisive action in relation to serious matters. There evolved, from the perspective of Commissioner Murphy, a lack of confidence on the part of many in the police force in what the PSC did and an adversarial stance in which many persons availed themselves of every opportunity for appeal and for delays and all manner of problems. The Galiat report identified those. It recommended that there be a less adversarial environment with a focus on modern managerial practices, I quote, "that are preventative, efficient, effective and protect the physical and mental health and wellbeing of all employees."

That is the attempt that's being made. It involves a culture shift within the PSC and the early indications are that the PSC is operating less as a silo and more as an integrated component, if you like, a supervision of members. That is the aspiration and the attempt that's being made. The PSC is engaging in educative processes, going out and speaking to members in stations around the Northern Territory as part of more accessible, less intimidating and more as part of a mechanism to enhance education of what's required of members.

So in summary, your Honour, you can hear a great many measures have been undertaken. We know your Honour doesn't like words or empty rhetoric and we've been asked to supply you with facts and information about actions that have been taken. We hope that you will interpret those as indicative of goodwill and attempts to respond to things which have been learned and needed to be learned by the Northern Territory Police Force.

Not everything has been solved. There is a good deal of further work to be done, but there are people of goodwill and there are, it's fair to say, more sensitised senior members of the police force to issues which have been uncovered in the course of this inquest. There is every reason, we submit, to be optimistic that the police force has learned lessons and is making progress in providing better policing services than existed at the time of Kumanjayi's tragic passing and we very much hope that those who loved and valued Kumanjayi Walker can derive some modest comfort that they have been listened to and many changes have been made and more will be made.

Thank you for listening to us.

THE CORONER: Thank you, Dr Freckelton.

DR DWYER: Your Honour, before I commence with my reply. I've received two text messages from Mr Officer, while Mr Freckleton - while Dr Freckleton has been speaking. One is this comment.

> "I would like to have it on the record, that contrary to what Dr Freckleton said, I did deal with the duty to make findings about circumstances of death at transcript 5890 and transcript 5891."

So no doubt you'll have a look at that.

And I've just received a message that Mr Officer has one matter to raise collectively, which he says will take no longer than two minutes.

THE CORONER: Does he propose to do that on the - - -

DR DWYER: (Inaudible).

MR OFFICER: Can your Honour hear me?

THE CORONER: Yes, I can.

MR OFFICER: Thank you, your Honour. (Inaudible).

THE CORONER: I can hear me too, just hang on a second.

MR OFFICER: I've been getting some feedback from your Honour.

THE CORONER: Yes. Maybe if you reduce your volume?

MR OFFICER: I've do so, your Honour.

THE CORONER: The other thing is, I can just stop talking, and we'll just listen to you.

MR OFFICER: Thank you, your Honour. I'll make the point brief. Your Honour, Dr Freckleton said today in reference to the racism word or word racism, (inaudible) naming the word, or naming the people and that's why we - (inaudible) characterise (inaudible). And he also mentioned in submissions about who (inaudible) parties (inaudible) Mr Rolfe's (inaudible).

Your Honour, as matter as fairness to, Mr Rolfe, your Honour should be careful not to single out Mr Rolfe (inaudible) to refer to (inaudible) but is limited to the TRG, and equally engaged in highly inappropriate and racist to offensive behaviour and lied to your Honour in statutory declarations. (Inaudible). But it's notable that (inaudible) Constable Rolfe (inaudible) submissions, you should take that into account, thank you.

THE CORONER: Thank you, Mr Officer.

Yes, Dr Dwyer.

DR DWYER: Your Honour, briefly, and strictly by way of reply might I deal firstly with to procedural - or procedural issues raised on behalf of firstly, Sergeant Bauwens and then Mr Rolfe. And then turn to two brief substantial matters. Firstly, you will recall, your Honour, I said that I would MFI a document when I dealt with the complaint made by Ms McNally in her oral submissions. The first complaint that she made with respect to an issue of procedural fairness concerns funding. And the suggested inability of her client to participate fully because her client, she says, was not fully funded.

You would dismiss that, in my respectful submission, as anything that impacted on procedural fairness for these reasons. Firstly, to make it clear, because the public, many of the public are listening, the Coroner's Court doesn't allocate funding to parties to participate in an inquest. The Coroner determines whether or not parties have a sufficient interest to appear on behalf of - or to appear in, and therefore they then go and seek legal representation, if they do have sufficient interest.

Sergeant Bauwens was given a right of appearance, or to - and to be legally represented. And that was at large. There were no restrictions placed on what he might assist your Honour with. Once parties have leave to appear, they then go to their employee. Often, or sometimes, a union for funding. Sergeant Bauwens approached his employer. And I understand was funded to appear in these proceedings, in the ordinary course, as witnesses do, including police officers, current and former, in inquests throughout Australia.

Sergeant Bauwens did that in the ordinary course, as did Sergeant Kirkby. And your Honour will recall, he was represented by Mr Robson, a Senior Counsel, and then Mr Fernandez. Officers Eberl and Hawkings applied for leave to appear. Were granted leave, and were represented by counsel, Mr Read, a Senior Counsel. Former Superintendent Pollock was granted leave to appear, and was represented by Mr Castleton. Officers Kirstenfeldt and Nankerville were represented by Solicitor Advocate, Mr Gnech.

And they appeared, as required. Clearly not all of those officers evidence was relevant to all the sitting days involved. And so those lawyers engaged in discussion with counsel assisting, but when they - informed the court when they would appear. So that complaint just has no substance. The second complaint made was a complaint about the failure to be able to provide documentation, or evidence to the court. That is a nonsense. And I read onto the record an email, which post-dated, the email correspondence that Ms McNally selectively refers to, in her written submissions.

That was an email dated 20 September 2023. Where after it's clear, as I indicated this morning, that Ms Wells indicated that she was happy to engage with a discussion with Ms McNally about whether they wanted to prepare a schedule for a

summons. Or whether or not they wanted to provide the evidence voluntarily. No further interest was shown by Ms McNally in providing a schedule. And then subsequent to that, on 20 September 2023, there was an open invitation, which made it blatantly obvious, that not only was the Coroner's Court prepared to accept any evidence from Sergeant Bauwens, but it would welcome the evidence that Sergeant Bauwens could give, because, and I quote from Ms Wells email:

> "He's in a unique position to help - to provide helpful evidence to the court about a number of matters, including for example, the resourcing and operation of the IRT."

And Ms Wells goes on to explain that he could provide that material by way of an attachment to the statements. So it - I wouldn't bother to MFI correspondence between lawyers unless it was directly relevant to what is put by way of complaint, on behalf of Sergeant Bauwens, selectively, and unfairly. And so I ask that that be marked for identification.

THE CORONER: Mm mm.

DR DWYER: Further, your Honour, attached to that, and this part can be marked at the same time, is a letter dated 27 March 2024. Your Honour will recall that a further complaint made on behalf of Sergeant Bauwens is that he wasn't given any notice of any adverse comments that might be made. That's a nonsense for a number of reasons. He participated in these proceedings. He was provided a lawyer. A letter on 27 March 2024, which outlined the allegations that Mr Rolfe made about racism within the TRG, and revealed the fact that there'd been racist certificates, which then led to your Honour discovering that one of the racist certificate awards was given to Sergeant Bauwens.

He was put on notice of that very fact. And he provided to provide a statement about it, which he did. And then the written submissions of counsel assisting, and the other parties, are exchanged, for the very purpose, or for one of the purposes is, to give parties notice of potential adverse comment. So I tender - sorry, I withdraw that. I ask that they be marked for identification.

THE CORONER: Yes, that will be marked for identification as one bundle.

DR DWYER: YYY, your Honour.

THE CORONER: YYY, we'll put a staple in it.

DR DWYER: Thank you, your Honour.

EXHIBIT MFI YYY: Bundle.

DR DWYER: The second issue by way of a procedural complaint was made by Mr Officer on behalf of his client. And I just reply to the one that was dealt with in some detail in Mr Officer's oral submissions. That is, his complaint that no party put

to Mr Rolfe, in evidence, the body-worn video that shows what he says is evidence of Mr Walker with his hand on Mr Rolfe's gun. As your Honour knows, throughout the course of these proceedings, arrangements were made for parties to be able to show documents, or show video footage, body-worn video footage, or other footage.

And they only needed to ask Ms Wells to assist them to get the court officer to put that up on the screen, or to provide whatever arrangements were necessary to show those documents, or that video to a witness. That was done on countless occasions throughout the course of his inquest. It was done, indeed, by Mr Officer, or Mr Edwardson, when they were cross-examining witnesses on behalf of Mr Rolfe. But specifically, in relation to the examination and cross-examination of Mr Rolfe, Mr Officer knew that Ms Wells, and this court, and your Honour's court officer, would accommodate any arrangements that were requested.

So, on 1 March 2024, Mr Officer sent Ms Wells an email saying:

> "Dear Maria, in anticipation of my examination of my client, I may take the witness to the following, 3-1-10, 10-1-16 and body-worn video, actual incident Rolfe two of four".

And I ask that that be marked for identification. And it just demonstrates how unhelpful it is to complain about these issues so unfairly.

THE CORONER: That's MFI - - -

DR DWYER: ZZZ.

MR OFFICER: Your Honour, I object to that (inaudible).

THE CORONER: Mr Officer, we are having difficulty hearing you.

MR OFFICER: (Inaudible).

THE CORONER: It might be that we need to get you on a phone link instead of over the - I don't what device you're using.

MR OFFICER: I'll do that now, your Honour.

THE CORONER: All right. Does someone have a number that we can contact him on?

MR OFFICER: Hello, Luke Officer speaking.

THE CORONER: Hi, Mr Officer.

MR OFFICER: Hi, your Honour. Can you hear me now?

HER HONOUR: Yes.

MR OFFICER: Your Honour, I object to that being MFI'd for these reasons. Firstly, whatever I put in an email to anticipate what I might examine might client on, which is a matter of convenience, counsel has been at pains to say (inaudible) notice and then they intend (inaudible) too so it ensures the smooth running.

That does not mean that's how I will examine or what I will examine on. Certainly, as I made clear yesterday and I've made clear in written submissions and that the Parumpurru Committee have made clear, Mr Rolfe has no obligation or duty to your court to prove anything.

Thirdly, the complaint I made about the fact the body-worn video is not played to anyone is not a complaint that no one has played it. The complaint is simply a submission where the part is not to put something a witness or suggest you can infer something whether you can prove something or not.

Then that was the opportunity that Mr Rolfe should have been presented with that body-worn video and asked to identify were he says he could see - on the video, it might show Kumanjayi Walker reaching for his gun. Now, that - - -

THE CORONER: Sorry, Mr Officer. I'm really sorry to interrupt. He had that opportunity. All witnesses had an opportunity, particularly represented witnesses like Mr Rolfe, to play any evidence that they wished to and point out anything on any of the tendered evidence or tender additional evidence, if they sought to do so. So he had that opportunity.

MR OFFICER: But your Honour, that's reverse engineering in the end game. The parties would suggest that it was a fabrication and a lie and because he doesn't point out on the body-worn video where it happened, that somehow, it's expected of counsel to make that forensic decision and to expect that we have to prove something is not how it works, your Honour.

The parties are going to suggest it was a fabrication. They should have put it to Mr Rolfe, "You tell us where on the body-worn video you say it happened", and then the questions go from there, "You can't see that, Mr Rolfe" or "You can see that."

It's not the duty of the lawyers for Mr Rolfe to prove anything, your Honour. That's the complaint we make. It's not the complaint of what was shown, per se, it's the fact that you can't expect an inference to be drawn by counsel not asking a question when (inaudible) themselves, that isn't a challenge, that's up to them. That's the purpose of the complaint.

DR DWYER: It sounds, your Honour, like Mr Officer accepts that if we want to, he could have shown the video to Mr Rolfe. On that basis, I don't need to press that that become an MFI. It's abundantly clear, in my respectful submission, that he had every opportunity to show the video, and that's my submission.

MR OFFICER: Well, your Honour, it's only a matter a law.

THE CORONER: Mr Officer, the video is in evidence. The submissions are closed, however, other than the submissions in reply. However, if there is a matter that you would like to make a further submission on, including in relation to asking me to view a particular part of the video which you think is very relevant to these proceedings, and you would like to point out what part of that video it is, I will receive that submission.

MR OFFICER: Thank you, your Honour, I'll consider that.

DR DWYER: Would your Honour just give Mr Officer a timeframe for doing so, because - - -

THE CORONER: Yes.

DR DWYER: - - - in our respectful submission, we need to be moving.

THE CORONER: That's by close of business tomorrow.

MR OFFICER: Thank you.

DR DWYER: Your Honour, moving on to substantive issues then and briefly, just one matter and that concerns the evidence of Mr Alefaio. The reason I raise it again is because Mr Alefaio was a key part of the morning arrest plant that was devised by Sergeant Frost and approved by hierarchy within the Northern Territory Police.

It's part of the reason it was a much safer option than the approach taken by Mr Rolfe when he abandoned that plan and determined to enter House 511 on the evening of 9 November, rather than the following morning. And that is, of course, in part because Mr Alefaio had a relationship with Mr Walker and could recognise him, removing the need for any identification, such as that took place, where Mr Rolfe got in very close proximity and held his phone up to Mr Walker's face.

The evidence of Mr Alefaio not read by Mr Officer when he made submissions includes this during the Inquest, on 20 September 2022 when he was being examined by Mr Coleridge, he was asked open questions by Mr Coleridge and they included these:

> "What, if anything, did Sergeant Frost say about the plan?---Your Honour, it was more like a brief - quick briefing she gave to me, and if I recall she wanted me to be there and assist the IRT that were coming later on in the day, and to go with them in the morning, the next morning."

Mr Coleridge asked the question:

> "Can you recall what time?---She mentioned that to meet up at the Yuendumu Police Station at 5 o'clock in the morning and to leave at 5:30 in the morning."

"Now I think you said the word, "Assist the IRT?---Yeah."

Open question asked by Mr Coleridge:

"What was the nature of your assistance to be?---"I believe it was just to be there, because of my knowledge, local knowledge of Yuendumu and also the relationship that I had with Lottie Robertson and Eddie Robertson who are carers for Kumanjayi at the time. So I was, you know, I was called in to hopefully communicate with them, ask them of his whereabouts and also I know Kumanjayi very well and I can - like if I say I can identify him, I know him and I can point him out to TRG (inaudible) IRT if that's - that that's him."

"Okay. Was it proposed that you be physically involved in the arrest? ---No. Sergeant Frost made it clear to me that I won't be involved in the arresting of Kumanjayi but after the arrest I'll be involved in the watchhouse processes back at the station when he gets to the station."

So it was very clear in that open exchange that he understood that the plan was that he meet the officers at 5 am, go out at 5:30 am, be there as part of the arrest plan to assist with the communication and the identification of Kumanjayi.

The final submission I make is in response to a submission made b Dr Freckelton on behalf of the Northern Territory Police and Dr Freckelton, of course, has made very significant submissions on a number of issues and I don't propose to address all of them - or many of them.

He has made very significant submissions in relation to the racism exhibited by individuals and the assertion by some parties of institutional racism and what your Honour should find in that regard and that will no doubt require your Honour's careful attention and review of the submissions, the evidence before your Honour and any relevant case law.

The only thing I propose to say by way of reply is this, your Honour. Dr Freckelton concedes that certain attitudes of Mr Rolfe may be relevant to his actions on 9 November that led to Kumanjayi's passing. They include attitudes of sexism, contempt for authority, contempt for bush cops.

Dr Freckelton concedes that your Honour may take those into account in determining that it's part of the reason why he disregarded the 5 am arrest plan and thought his approach was better.

My submission in reply, your Honour, with respect, is that Zachary Rolfe - the whole person - came to Yuendumu on 9 November 2019 and the whole person was someone who could behave in polite ways, at times, and who behaved in a way Mr Officer says - urges your Honour to take into consideration of where he was thoughtful on occasion and received commendation on occasion. The whole person was someone whose attitudes were sexist, contemptuous of female police,

contemptuous of some superiors and contemptuous of bush cops and racist. And so I remind your Honour of the evidence given by Police Psychologist Mr Van Haeften when asked a question or series of questions by Mr Officer. Mr Officer began his questions:

> "If a police office has never been involved in a situation where in very quick time they are subjected to a rapid and violent assault, it wouldn't necessarily be an instance where they'd been desensitised and exposed to those situations."

He went on to say:

> "In those unique events when we talk about characteristics and having in mind your qualifications is it the case that an individual in that situation would fall back on their training and decisions they make in the moment?"

And the answer:

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

The decisions Mr Rolfe made on 9 November 2019, your Honour may find were influenced by his attitudes and his values and they included attitudes of sexism, contempt for female police, contempt for some superiors, contempt for bush cops and racism.

May it please the court.

THE CORONER: Thank you. These past two days have been important and they have been very helpful to me in the task that I am now about to undertake. I wish to thank all counsel for their detailed written submissions and thoughtful oral submissions. All the submissions will be carefully considered. It's my intention to list this matter again likely in late February 2025 to hand down my findings and we'll adjourn now.

DR DWYER: Sorry your Honour, just one matter.

THE CORONER: Sorry.

A PERSON UNKNOWN: Your Honour I apologise in advance not having had a chance to fully discuss this with all the relevant persons but it's a developing matter over today and I do have instructions now to invite your Honour at least to consider delivering the findings and recommendations of the inquest at Yuendumu. And I appreciate this will be unexpected and so I'm putting it that way. Your Honour has been invited and I'm rephrasing that to say that if your Honour can at least consider that invitation and no doubt there will be some correspondence or whatever there will be later about how that idea develops.

THE CORONER: Thank you and I have indicated firstly that it was my intention to list the matter likely in late February 2025 and I understand that we will be consulting with the community as to the appropriate timing of the handing down of the findings. There may be community matters which affect the date. And I also have not indicated where that will be.

A PERSON UNKNOWN: Thank your Honour. There are often February community matters thank your Honour.

THE CORONER: Thank you. We will now adjourn.

ADJOURNED