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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 29 SEPTEMBER 2022

(Continued from 28/09/2022)

Transcribed by:
EPIQ

THE CORONER: Dr Dwyer.

DR DWYER: Thank you, your Honour. Your Honour, I respond now to some objections that were raised recently in relation to evidence that your Honour might receive. Firstly, in terms of the structure of my oral submissions - - -

MS OZOLINS: Your Honour, I apologise. I did raise with counsel assisting this morning that I would like to be heard on an issue before argument commences because I'd put counsel assisting on notice I understood that it would be raised in the first instance. Would your Honour hear me on that issue now?

THE CORONER: Yes, thanks Ms Ozolins.

MS OZOLINS: Your Honour, the objection to proceed in the absence of police members who are unrepresented in these proceedings is renewed. I did make some brief submissions in relation yesterday. My concerns were raised immediately after Dr Freckelton advised that he could not and would not be representing certain members of the Northern Territory Police Force who up until that point had been represented by him.

Notwithstanding the criticism levelled at me yesterday for raising the issue in court rather than having conversations outside of the court, this is an important issue which, in my submission, needs to be raised on the record to ensure transparency and to preserve the position of those that may be affected by these proceedings and in the absence of competent counsel to represent them.

I certainly take note of the matters your Honour considered in the course of determining to proceed to hear evidence yesterday. But your Honour, in my submission, the issues for today are quite different. Your Honour will hear argument today about the admissibility of evidence which is intended to be adduced in these proceedings.

I can't say what submissions might be made on behalf of the members who are now not represented but it's certainly the case that, at least in relation to the phone download, there are several members who are likely to be affected by any determination in relation to the admissibility or the use that might be made of that material. And, in my submission, they should be given an opportunity to be properly advised and heard on those issues.

Now the issue of conflict had been raised previously and foreshadowed as a potential issue but it wasn't until less than 24 hours ago that those members have found themselves without counsel. In my submission, they shouldn't be denied the opportunity to be properly and independently advised and represented and their interests have to be protected and advocated for in the course of these proceedings.

Your Honour, the schedule of this inquest is obviously important but it cannot be the overriding consideration at the expense of procedural fairness or natural justice and as officers of the court, all counsel here should be concerned with that. It's

certainly submitted that in these proceedings, including argument and determination of issues going to admissibility of evidence, our submission is that your Honour should consider adjourning these proceedings until such time as those officers affected by the determination yesterday, that they won't be represented going forward, have had an opportunity to obtain advice and to participate to the extent that they choose to in these proceedings, obviously given your Honour's leave, if that's what those officers determine to do.

So effectually we're asking that your Honour give consideration to adjourning these proceedings.

THE CORONER: Do any of the other – before I hear from counsel assisting, do any of the other parties wish to say anything in response or in light of those submissions. Dr Freckelton.

MR FRECKELTON AO KC: Your Honour, we do not address the essence of what our learned friend has said but as far as we understand the situation there has been no determination, certainly from the Bench, about those matters. And what we can indicate to you is that conversations had been had with certain relevant members and each has been given careful attention and as yet unresolved.

DR DWYER: Your Honour, I am grateful for the careful attention that learned senior counsel for NTPOL has given this and will continue to give this. There is no prejudice to any of the witnesses. And can I just remind Ms Ozolins, she may not have checked her emails, but at 8:49 in response to those email that she sent Mr Coleridge sent an email to all parties including Ms Ozolins, "Writing to advise that counsel assisting's position in relation to the earlier email from this morning was there is no prejudice to any unrepresented person in merely hearing submissions by representatives today on Constable Rolfe's recent objections to evidence".

Your Honour, we then provide the written submissions and the transcript to any member of the IRT or police who is no longer represented by NTPOL – and that's yet to be resolved. But any member who wishes then to seek leave to be represented separately. Your Honour determined as requesting this email that those parties would have until Friday 7 October to provide any written submissions on Constable Rolfe's objections. Your Honour will then consider and rule upon the objections.

So as Dr Freckelton just said, your Honour hasn't made a determination, so there is ample opportunity yet for those witnesses who wish to be separately represented to make submissions on that matter. In no way will those witnesses be denied an opportunity to be properly advised or represented. In no way will procedural fairness in this inquest be compromised.

Now the NT Police Association was granted leave to appear in these proceedings in, I think, late June or July. So for many months prior to this inquest. There were three directions hearings in this inquest including one after the NT Police Association was granted leave. There has been ample opportunity to address any concerns prior to the start of this inquest.

That doesn't absolve me as counsel assisting of the obligation to keep an eye on the issues of procedural fairness. I am mindful of them at all times and I am mindful of them now in making these submissions to your Honour. But we have to use court time appropriately and this inquest cannot stop and start merely because of procedural concerns that are not real or cannot be catered for. And those are my submissions, your Honour.

MS OZOLINS: Can I just comment on a couple of those matters, your Honour. The first thing is that the concerns about managing the conflict were specifically raised prior to the inquest, in fact on this very Bench there were discussions about concerns that the Northern Territory Police Association had.

THE CORONER: So none of this takes anyone by surprise, none of it is new but we are now grappling with it.

MS OZOLINS: And your Honour will appreciate because - - -

THE CORONER: Or the parties are grappling with it.

MS OZOLINS: - - - it was done in open court yesterday that Dr Freckelton raised the issue of not representing certain police members. That was the first and I found out immediately before I got to my feet and took instructions via text in relation to expressing our concern, because it does directly affect the welfare of members who are discussed and will be – or some of them will be witnesses in these proceedings.

The second thing is I did check my emails this morning, I didn't realise that counsel assisting's email was the determinative position. I understood that that was the submission that was going to be made. If your Honour - - -

THE CORONER: That is the submission that was being made obviously. It was put as counsel assisting's position.

MS OZOLINS: Yes. So it's being suggested that should members determine to engage legal counsel that they will be given a week from today to review all of the material and provide submissions in response which your Honour will then consider.

The argument today will clearly include submissions made by Dr Freckelton which it must be assumed have been prepared in contemplation of instructions received from members who were formally clients. In my submission, your Honour, there's a real danger that these members won't be able to be properly represented or have their interests protected in circumstances where at the moment they're completely unrepresented in these proceedings.

THE CORONER: However, I will not be making a ruling on any of this today. I will simply be hearing submissions. And all the parties are entitled to make submissions. And as I said, if parties become represented and require an opportunity to respond or be heard, they will be given that opportunity as and when it arises and we can

ensure that procedural fairness and natural justice are afforded to each of those persons if they choose to get separate legal representation and if they're separate legal representation wish to raise matters with the court.

But I am proposing to hear submissions today. As indicated, we will make all the submissions, written and oral, available to any of the persons who are now no longer represented and I am giving over a week for written submissions to be provided on their behalf, if they wish to do so.

MS OZOLINS: As the court pleases.

THE CORONER: It is only Thursday and I'm giving them to Friday next week.

DR DWYER: Your Honour, just way of example and perhaps it might provide some comfort to my learned friend, Ms Ozolins. Sergeant Bauwens, as I understand it, is seeking some separate legal representation.

I have had very constructive discussions with legal representatives who may appear for him, and I was notified that they may have submissions to make with respect to the admissibility of evidence and they will, of course, be given that opportunity to do so.

So, Ms Ozolins can rest assured, I have had those discussions with legal representatives or potential future legal representatives. I am mindful of it and I don't see any issue with today's proceedings.

THE CORONER: Thank you. All right, so the matter is going to proceed today. In light of the time that's going to be provided for other submissions to be made, as I said, any other parties who seek to be represented, I will give leave to receive those submissions, even before we have necessarily heard applications by them for leave to appear.

And I am hoping that, in light of all of that, we may be able to proceed with witnesses as planned, Monday, not next week, but the following week.

Yes, Dr Dwyer.

DR DWYER: Thank you, your Honour. Returning to the issue then of the oral submissions, I propose, your Honour, just by way of assistance, an outline to make first, two preliminary observations about submissions by counsel for Constable Rolfe.

Second, to make submissions about the statutory framework and the nature of your Honour's powers; and third to turn to a number of categories of evidence to which Constable Rolfe objects, which by way of example, might be shown, in my respectful submission, not to be objectionable.

Constable Rolfe has objected to evidence that falls under eight categories. The first is the evidence concerning the honesty of Constable Rolfe's application to join

the Northern Territory Police.

Second, evidence concerning the nature and adequacy of Northern Territory Police recruitment policies, and those two issues are obviously related.

Third, evidence concerning the alleged discrimination by Northern Territory Police against Indigenous persons or community police.

Fourth, evidence concerning Constable Rolfe's use of force history.

Fifth, evidence concerning Constable Rolfe's disciplinary background or history, and those two issues, four and five, may be related.

Six, evidence concerning the possibility of prior recreational drug use by Constable Rolfe while a serving member of the police force. Seven, evidence concerning the procedures of NT Police in relation to drug and alcohol testing and those two are related.

And eighth, in exploration of whether evidence in the criminal trial of Constable Rolfe was contaminated. By way of preliminary observation, the first is that Constable Rolfe's summary of the procedural history in written submissions filed on his behalf ignores the unexplained lateness of those objections.

The recent written submissions filed on his behalf begin by seeming to suggest that Constable Rolfe's legal team is perplexed that, on the one hand, counsel assisting and other represented parties are critical that the objections are raised in a way that is grossly late, in using that expression from their submissions.

But on the other, in your Honour's decision, which is the inquest into the death of Kumanjayi Walker ruling 2, it was determined to be premature to make a ruling on objections to evidence that were foreshadowed in those late submissions. There is no inconsistency in that position.

The point that we understood your Honour to have made in your Ruling 2 was that a liberal approach to the receipt of evidence is often necessary during an inquest, because it will often not be possible to determine what, if any, comment or recommendation might be permissible as a result of evidence that has yet to be called.

The authority for that as cited in previous submissions in your Honour's findings, is his Honour, Beach J in *Thales Australia Limited v The Coroners Court of Victoria* [2011] VSC 133 at 68 and *R v Doogan; and Lucas-Smith* [2004] 157 ACTR 1 at 34. Ultimately, the precise relevance of particular evidence will not be fully understood until the conclusion of an inquest. And that is the sense in which the objections may be said to be premature.

That is a very different thing to outlining that if Constable Rolfe's legal team knew that he wished to make objections of this kind in May of this year, then those

objections should have been presented at that stage, rather than waiting three days prior to the commencement of the inquest.

Most of the matters that are the subject of evidence outlined in those one to eight points, are clearly outlined in the expansive report of – and extensive report of Superintendent Proctor which is some 170 pages.

So, by way of example, issues relating to the honesty of Constable Rolfe's application when he joined the Northern Territory Police Force recruitment policies and oversight, his use of force history, disciplinary background and history are all clearly – and the, I should say also, issues in relation to the potential contamination of your Honour's Coronial inquest. An investigation is clearly outlined in that report.

In fact, the schedule of objections that has been filed on behalf of Constable Rolfe begins with references to the pages of that Proctor report which have been available for a long period of time and at least since May; 30 April – 13 April.

Had those objections been raised in May when what was then being determined to be an issues list was distributed with seven broad issues and over 50 questions, and when the directions hearing was held in good faith to give parties ample time to properly prepare for this inquest so that there would not be the sorts of procedural delays that we are now experiencing.

Court time would have been saved and a element of certainty would have been given by a ruling similar to that your Honour has given previously in the Ruling 2 and the ruling that your Honour will now have to give following these arguments. The procedural history is accurately set out and helpfully with respect, and the submissions of NAAJA dated 27 September.

Your Honour, I noted last time that two days were set aside for legal argument in relation to the objections previously raised and heard about the admissibility of evidence relating to Ms Campagnaro and the text messages. Two days were set aside and I noted earlier that that was no small thing. Now, we're at day number three and your Honour will also have to make a ruling and time set aside for that and for the enormous amount of work that goes into that.

That just does not roll timetable back three days, rather it jeopardises weeks of timetabling or it has the potential to. It jeopardises work obligations. It jeopardises family schedules. It jeopardises flights and accommodation. It is not just inconvenient and costly, it is stressful and it is emotionally taxing for witnesses who may already be anxious about giving evidence and distressed, understandably, about the circumstances of Kumanjayi's death.

That is why great care was taken to list this matter for three directions hearings before we started this hearing on 5 September. Two of those directions hearings were after the draft issues list was distributed when parties had the great bulk of brief material.

One was in May and subsequent to the distribution of an issues list and was the subject of cooperative and extensive discussion outside of course between myself and other parties to the bar table, including those appearing for Constable Rolfe and then the second directions hearing was in August to make absolutely sure that there was nothing else that could be raised that might affect the timetabling of this matter.

Sincere efforts were made to ensure this process would be fair procedurally and actually and I will continue to make those sincere efforts to ensure fairness. But sincere efforts were also made and will be ongoing, to ensure this process is not confusing for non-lawyers who also have a very important stake in these proceedings, particularly of course, the family of Kumanjayi Walker. Court proceedings are confusing enough without trying to explain why we have these delays.

Those assisting your Honour, as you know, have made sure that we can have summaries on evidence to date, in Warlpiri so that the Coronial process and the evidence can be explained. We will try to make sure that Kumanjayi's family who are Warlpiri and Luritja speakers, will explain - will understand this process. But it is hard enough for broader members of the community to understand why, in proceedings that are so important to the Northern Territory and so important to individuals and community - including, of course, police and all the service providers, why there is a delay.

Section 4(1)(a) of the *Coroners Act* specifically states that the functions of the Territory Coroner include ensuring that the Coronial system in the Territory is administered and operates efficiently. Now, I absolute accept what Ms Ozolins said that efficiency can't override fairness and it will not and it has not. But that section in the *Coroners Act* is an exultation to your Honour to deal with these matters fairly and efficiently. And includes your Honour, of course, has an obligation as the Territory Coroner, to all families and all community members, who also have other matters that will come before you next year. That is why your Honour urged parties at a previous direction's hearing to speak freely with counsel assisting about any matters of concern and it is certainly part of the reason why I answer my phone day and night, if any members or interested parties want to speak to me about any issues. These delays run counter to what the expectations of the *Coroners Act* are in that regard.

Putting that behind us and moving to the substantive issues, the position of counsel assisting is that the evidence concerning each of the eight topics may be relevant to your Honour's findings or recommendations and should be received on that basis.

Your Honour, before I go on to that, I just note that another observation about the submissions made on behalf of Constable Rolfe recently - and I say this not meaning any disrespect - is that they appear to be tactical. I may be wrong about that but it confuses me, this aspect of it. Despite your Honour's clear indication in ruling number 2, that objections could and should be taken to discrete items of

evidence, lawyers on behalf of Constable Rolfe have not objected to questions that he now - that it is now alleged on his behalf go to issues beyond the scope of the inquest.

Perhaps more importantly, or certainly just as importantly, counsel for Constable Rolfe have themselves examined on the very issues that are now submitted to be beyond the scope of the inquest. By way of example, on 26 September 2022, so just a few days ago, Assistant Commissioner Travis Wurst was questioned about steps that should be taken under the General Order on Deaths in Custody and Investigations to ensure the credibility and reliability of the police investigation, specifically the Assistant Commissioner was asked questions about a barbeque that Constable Rolfe and other police officers attended at his home on 11 November 2011.

My learned friend, Mr Merenda was present for the entirety of that examination. Mr Merenda did not object to that line of questioning and then there are two pages of examination in the transcript where he examined himself on issues related to the independence of the investigation and potential contamination, and that's a transcript 26 September 2022 at 1049 to 1050. I don't say this with any disrespect to my learned friend, it's just an issue that relates to my confusion as to the way in which these issues are being raised.

Assistant Commissioner Wurst disagreed with nearly every proposition that was put to him by Mr Merenda and the result that we now see is an objection from Constable Rolfe to the examination on this issue on the basis that it doesn't fall within your Honour's jurisdiction under the *Coroners Act.*

Your Honour, I turn to your power to investigate. The nature of your Honour's powers and duties under the *Coroners Act* have been well and truly fleshed out in previous written submissions and oral submission. There are just two observations I wish to make in response to the recent written submissions on behalf of Constable Rolfe.

The first is that, with respect, Constable Rolfe's legal team continue to ignore the textual differences between the Coroners Act of the Northern Territory and Coronial Legislation in other jurisdictions. For example, the cases on which Constable Rolfe relies such as Harnsworth, *Doogan v The State Coroner ex parte Minister for Health* concerned differently worded Coronial Legislation in the ACT, Victoria and NSW.

Each of those cases concerned the breadth of the expression, "Cause of death". Those provisions are, in my respectful submission, distinguishable from s 34(1) of the *Coroners Act* which, for example, permits your Honour to make findings on the cause of death and any relevant circumstances connected with the death.

Indeed, in the case of *Doogan*, the Full Court of the Australian Capital Territory expressly noted that its observations about the scope of an inquest, under ACT legislation would not necessarily apply in other jurisdictions which permitted an

investigation into the circumstances in which a death or fire occurred, and that is par 32 of *Doogan.*

The second observation is that Constable Rolfe's legal team in their written submissions, continue to ignore the purpose and statutory context of the Coroners Act of the Northern Territory. Upon its enactment in 1993 the Legislative Assembly expressly acknowledged the important of the Royal Commission into Aboriginal Deaths in Custody. The Royal Commission had enquired broadly and deeply into not just the causes of Aboriginal deaths in custody but also the social and cultural and legal factors which, in Commissioner Muirhead QC's judgment, appeared to have a bearing on those deaths.

It ultimately recommended that the Coronial legislation be strengthened to increase the breadth and depth of Coronial investigations in the case of deaths in custody and in particular the death of an Aboriginal person in custody.

It is in that context that the Legislative Assembly of the Northern Territory enacted s 34(1)(a)(v) of the Act in 1993, which is an unprecedented in its breadth and it is in that context that the Legislative Assembly of the Northern Territory enacted s 26 of the Act which permits or requires your Honour to investigate certain additional matters where the relevant death is a death in custody.

Indeed, as counsel for Constable Rolfe himself submitted in the original submissions at par 21:

> "The evidence purpose of these provisions was to ensure that deaths in custody are subject to greater scrutiny in order to prevent similar deaths in the future."

And that prevention goal has been emphasised on a number occasions by your counsel assisting team.

Finally, your Honour, it is necessary to bear in mind that because Coronial legislation is remedial and because it confers jurisdiction on a court, it is to be read as broadly as the text and context will allow, that is not inviting your Honour to go beyond the scope, it is merely to note the breadth of those provisions.

Accordingly, any attempt to artificially narrow the language which is actually used in the *Coroners Act* of the Northern Territory, should be rejected.

Finally, your Honour, in relation to the discrete objections, in our view the connection between the disputed evidence and your Honour's functions under ss 26, 34 and 35 of the *Coroners Act* is plain and I will simply make some brief observations about certain categories of the evidence that is objected to.

The first, category C, as outlined re the categories which are defined by the legal team of Constable Rolfe, category C is said to be evidence concerning the alleged

discrimination by Northern Territory Police against indigenous persons or community police, many there of course to include Constable Rolfe.

The objection appears to cover at least two subcategories of evidence. First, the text messages that event racist attitudes towards Aboriginal people. And second, the text messages that evidence derogatory attitudes towards bush cops - otherwise known as community police.

The first response to that objection is one that has already been communicated to Constable Rolfe in writing yesterday in that, in my respectful submission, it is a transparent attempt to relitigate matters that your Honour has determined previously in ruling number 2. That ruling was delivered by your Honour on 13 September and your Honour dismissed Constable Rolfe's objections to text messages and the evidence of Ms Campagnaro.

Your Honour's ruling should not be revisited and it would be inappropriate to do so. It appears, your Honour, from the conduct of those appearing for Constable Rolfe that until recently we – it certainly appeared – that your Honour's ruling was accepted and that subsequent attempts then to reventilate it appears to be a recent thought. That was my concerns around the tactical timing of these objections.

Since 13 September evidence in relation to the text messages, some of which are set out on MFI C, has been called from almost every witness, including Sergeant Anne Jolley, Constable Langdon-Smith, Senior Constable Chris Hand, Sergeant Julie Frost, Assistant Commissioner Travis Wurst and Commander Nobbs. Without exception those police officers have condemned the use of any racist language and say that it is not acceptable and it is not representative of the Northern Territory Police Force. There has been no objection in relation to an issue of scope when those text messages have been put in evidence.

On one occasion Ms Ozolins objected because one of the persons mentioned is not – was not legally represented at this stage. Their name of course has not been released and that alleviates issues of concern in relation to fairness. But no objection was raised on the basis of scope.

Similarly, questions have been asked, for example, by Constable – of Constable Frost and Assistant Commissioner Wurst and Superintendent Nobbs in relation to the text messages where an officer appears to give instructions to Constable Rolfe as to how evidence may be given and whether that in fact compromises the investigation into these Coronial proceedings and whether or not that is a breach of the general order in relation to deaths in custody and the investigation of serious incidents. There was no objection at that stage on any basis of scope.

And in fact, of course Mr Mirenda (sic) asked some questions - - -

MR MERENDA: Merenda.

DR DWYER: Merenda, I beg your pardon. Thank you. At page 10-49. "Commissioner, you were asked questions by Dr Dwyer earlier today about whether you considered what I will call the Rolfe barbecue and having the capacity to directly or indirectly contaminate the investigation or the evidence obtained as a cross investigation. Do you recall that". Answer, "Yes".

And then he questioned who Mr Merenda was representing. And I note Mr Merenda your name is spent incorrectly in the transcript. And it goes on after Mr Merenda explains who he acts for.

> "Now you have to agree though, wouldn't you, that in the context of evidence leading up to the death, the capacity for those texts to contaminate the evidence or investigation were ameliorated if not completely by virtue of the fact that these events were captured on body worn video footage".

And your Honour will recall the Assistant Commissioner's response:

> "Yes, they were. But that captures whatever the camera's looking at, it doesn't capture everything else that's happening around it, so I don't accept that at all".
>
> "But in the context of this case though you know don't you, that each of the officers who were deployed and were in the vicinity of House 911 had body worn video".

He's accepted that he didn't keep a track of that. And then it was put to him that the ability – that it ameliorated the capacity for the evidence from those officers to be contaminated. And the response was:

> "Only so far as what you're talking about, but there's a lot of other activity that occurred prior to and after that's not captured by the body worn video. So it's the entire process, it's not just that".

My point is, your Honour, that there was a real grappling by Mr Merenda with that evidence and putting it to Assistant Commissioner Wurst and Commissioner Wurst gave reflective, and in my respectful submission, thoughtful and considered answers in response.

The text messages that are on the list in MFI C may be relevant to a number of issues. That will be for your Honour to determine after you've heard all the evidence, in my respectful submission. It is too early to make a determination as to exactly how they are relevant or indeed if they are.

But there is clearly a live issue as to whether or not Constable Rolfe, who saw the written operations order and photographed part of it and according to Sergeant Frost received a verbal briefing on it, whether or not Constable Rolfe deliberately ignored the content when he and other members of the IRT left the Yuendumu

Police Station and went directly, first to House 577 and then to House 511 in what appears to be a search for Kumunjayi and then an attempt to arrest.

I don't invite your Honour to make any prejudgment of those issues. That may or may not prove to be correct on the evidence. But, in my respectful submission, what is emerging very clearly, is a breakdown in communication about what the written operations order said should happen and what ultimately happened on the night of 9 November.

The written operations order which was drafted and designed by Sergeant Frost with the assistance of Officer McCormack was ultimately approved by Superintendent Nobbs. And Superintendent Nobbs gave clear evidence as did Sergeant Frost, that their intention was for high visibility policing and general patrols until 5 am. Whether those patrols were to start at 11 pm was a matter of detail. But it was clear that it was to be high visibility patrols and general policing until 5 am and there was going to be a meeting of IRT members at the police station at 5 am and then Constable Alefaio would go with them to the house to effect an early morning arrest.

That is not what happened on the night, very clearly. On the night four IRT members and Senior Constable Donaldson left the police station at Yuendumu and it appears went straight to those two houses with an intention of affecting an arrest. And your Honour will recall the evidence of Assistant – I withdraw that – of Superintendent Nobbs that that is not what he intended and it was not what Sergeant Frost intended.

Now where was that breakdown in communication, that is what your Honour will have to grapple with. Was it, for example, a breakdown in communication between Assistant Commissioner Nobbs and Furniss and McCormack or McCormack and the IRT or certain members of the IRT or was it a breakdown in communication between two members of the IRT, Officers Kirstenfeldt and Rolfe who arrived first and received some preliminary briefing and Sergeant Frost.

Or was it a breakdown in communication between the four IRT members and Sergeant Frost. Or was it a deliberate decision by Constable Rolfe and/or others to disobey the written order. Your Honour does not yet have enough information to determine that, in my respectful submission. But what is clear is that the written operations order which was intended by Superintendent Nobbs was not followed for some reason.

It will have escaped nobody's attention that Sergeant Frost is a female community police officer or a female bush cop. And it will escape nobody's attention that the arrest plan was designed in a way that in her mind would minimise the risk of force, because at 5 am people would be asleep.

On the issue of the use of force and whether there was a deliberate disobeying of those written orders, as opposed to a communication breakdown, the text messages appear to reveal dialogue which may be relevant. For example, on the

issue of whether there was a deliberate disobedience of that written arrest plan, contempt, expressions of contempt towards females and more importantly expressions of contempt about bush cops may well be highly relevant.

And there is without doubt contained within those text messages expressions of real contempt towards community police who are thought, in those text messages, to be hopeless or somehow – I think the exact words are hopeless. But lacking in ability compared to Constable Rolfe and other members of the Alice Springs Police Force, including members of the IRT, including senior members. And that is of great concern and of clear relevance in terms of determining whether or not the written operations order was given respect or whether or not there is an explanation that is different to deliberate disobedience.

On the issue of the use of force by Constable Rolfe and what tactical options were planned for and chosen the text messages maybe relevant because they reveal dialogue in which Constable Rolfe appears to boast about the use of force, towelling up the locals and enjoying towelling up the locals and smashing up the community of Borroloola.

On the issue of whether or not unconscious or conscious bias is relevant, it is very clear that those text messages contain dialogue between Constable Rolfe and other police where a number of the officers use overtly racist language that has been condemned by every single police officer who has given evidence since those text messages became available.

It may or may not be the case that the use of that language leads to certain attitudes of disregard and disrespect towards members of our community who are Aboriginal people and it may lead to unconscious bias in the choice of tactical options before going into the house or it may lead to unconscious bias or actual bias in relation to the choice of how that arrest plan was to be affected.

Your Honour does not have all the information which will yet enable you to make that determination and it will be critical, in my respectful submission, for your Honour to hear from the members of the IRT, including of course Constable Rolfe.
Your Honour may well be impressed with the evidence that they give and they may well have an explanation for your Honour. But – and they may well say, some of them, or all of them, that the language used in those text messages does not reflect on their behaviour of their decision-making.

But your Honour doesn't know that yet, because we are yet to hear from those officers. Clearly, in my respectful submission, it is extremely important for us to hear from those officers and particularly Constable Rolfe in that regard. Constable Rolfe submits in his written submissions that the text messages that evidence racism bear no rational connection with any relevant circumstance connected with the death because the body-worn video of officers on that night does not depict racism in the moments that Kumanjayi Walker was arrested. And the body worn video footage is said to depict a gentle and respectful arrest.

In my respectful submission, the focus on that ignores a range of decisions made by Constable Rolfe and others prior to the entry into House 511 which led to the confrontation with Kumanjayi, which may or may not have been affected by conscious or unconscious racial bias.

Constable Rolfe submits that the text messages that evidence derogatory language are not relevant because there is no inconsistency between Sergeant Frost's instructions to the IRT about what they were to do and what the IRT actually did. That is plainly incorrect, with respect.

It's clear from the evidence, written and oral of Sergeant Frost that it was her belief when the IRT members left the Yuendumu Station that the 5 am arrest plan was still in effect. She gave evidence that it was Constable Kirstenfeldt who suggested that the IRT should go out and gather intelligence. She rejected the notion that their almost immediate searches of House 577 and House 511 amounted to mere intelligence gathering. And she and other officers have noted that in fact those sorts of actions would jeopardise the plan of a 5 am arrest which was meant to minimise the use of force.

The objection to the text messages was advanced again on three bases. That the text messages were obtained unlawfully; that they were too remote to engage the jurisdiction or function of the court; and that they had the real prospect to undermine the jury verdict of an acquittal.

In relation to the first one, that the text messages were obtained unlawfully, your Honour has previously ruled on that. Your Honour's ruling is consistent with the ruling and reasoning of Burns J in the Supreme Court in *Rolfe* (No 7) (2021) NTSC 6.

Your Honour, the incorrect information suggesting that those text messages have been unlawfully obtained has been disseminated on some social media sites. It is not fair on the public and not appropriate for the public to continue to think that those text messages were unlawfully obtained. They were not. That is your Honour's ruling, that was the ruling of Burns J.

It is unfair on members of the public to have that fake news disseminated because it leads to members of the public being concerned that their text messages might be downloaded and their phones being seized randomly. That was what was suggested on one social media site. That is clearly not the case. Constable Rolfe's messages were downloaded after the phone was seized, after he was arrested for an offence that is the most serious on the criminal calendar, and that is the offence of murder.

And it's in that context that the Supreme Court Justice's ruling and your Honour's ruling were that the text messages were legally obtained, for the reasons that your Honour so carefully sets out with respect, in reasons number 2.

I've dealt with the issues about the text messages not being too remote to engage this jurisdiction. In relation to the issue that the evidence has the real prospect of seeking to undermine the jury verdict of an acquittal, your Honour would reject that swiftly, with respect. They go to the heart of issues that concern your Honour's function as a Coroner in the Northern Territory. They do not seek in any way to be used in a way that would invite you to consider whether Constable Rolfe should have been found guilty of (inaudible) offence. That issue is not an issue for your Honour.

Another category of objection is evidence concerning Constable Rolfe's use of force history, body worn video footage use history, firearms and the monitoring of those matters, that's category D; and category E, evidence concerning Constable Rolfe's disciplinary background and history.

I'll just collapse those issues and deal with them in this way. In my respectful submission, Constable Rolfe's use of force and disciplinary history may well be rationally connected with your Honour's Coroner's functions under ss 26, 34 and 35. The submission fails for essentially three reasons.

First, the fact that there is no questions to who fired the fatal shots does not mean that evidence as to prior inappropriate excessive use of force is not probative as tendency evidence. It is.

For example, it may be probative of Constable Rolfe's state of mind at the time of the shooting and it may be probative of his state of mind in the lead up to the shooting and whether or not there were less forceful options, or options that would have minimised the risk of use of force and being safer for Constable Rolfe and for Kumanjayi.

For example, Sergeant Barram's expert opinion in the trial was that Constable Rolfe had a tendency to rush into situations in such a way as to increase the likelihood of a use of force scenario. I correct myself, your Honour, Sergeant Barram's expert opinion in his report that is tendered in these proceedings is that – and Sergeant Barram of course will be available for cross-examination – is that Constable Rolfe had a tendency to rush into situations in such a way as to increase the likelihood of the use of force scenario.

And that issue is, in my respectful submission, squarely an issue within your Honour's remit and should be an issue of concern. It's not an issue I'm inviting your Honour to predetermine now of course. This is just in relation to the admissibility of this evidence. Because your Honour is open minded about these issues and your Honour will give full and fair consideration to Constable Rolfe's evidence when he comes to give that evidence and the evidence of other members of the IRT.

There is no real risk of a trial within a trial as suggested by those appearing for Constable Rolfe. In many cases there is body worn video footage or even transcript of a local court hearing that then becomes relevant in proceedings. If there are

particular witnesses who Constable Rolfe wishes to say should be added to the witness list in order to – so that he can fairly represent the situation in previous situations where he is said to have used excess force, then those assisting Constable Rolfe should notify counsel assisting. But we have not, at this stage, had any suggestion that any further witnesses should be added to the witness list in that regard.

Thirdly, and perhaps most importantly, as I've stressed previously, your Honour, one of the significant focusses for – or the focus in this regard is about the supervision of what is said may be excessive use of force; the supervision by NT Police of Constable Rolfe in certain circumstances, but equally and possibly more important going forward, of other officers in those circumstances.

So that any issues in relation to potential excessive use of force can be addressed, not necessarily through discipline, although that might be appropriate, but at least through instruction and guidance, so that excessive use of force patterns are picked up and addressed.

For example, taking the case of the hearing in relation to Malcolm Ryder which has received some publicity. Irrespective of the issue of whether or not Constable Rolfe actually used force excessively against Mr Ryder, a Local Court judge found that, in his opinion, Constable Rolfe had perjured himself and that there was excessive force used.

What was the oversight of that incident by NT Police and was any guidance given to Constable Rolfe after that incident, which was of course prior to what happened on 9 November 2019. In relation to a review of the use of force incidents, as your Honour will recall, in his report, Sergeant Barram identifies what he believes to be five occasions prior to Kumanjayi's death where there was excessive use of force by Constable Rolfe.

But his supervisors who were responsible for review of the use of force did not identify excessive force at that time. Those five occasions have been looked at again by Commander Proctor – sorry, by Officer Porter and the PSC. In his respected opinion, there are two of the five that are clearly excess force; two that are undetermined.

I have said to my learned friends, including those appearing for Constable Rolfe, that we will create a chart which identifies clearly what the history of those matters is and we will clearly identify, prior to that evidence, how we determine it precisely may be relevant.

But there are at least two occasions where there are – I'll withdraw that. There are two occasions where there are two senior members who believe there was not sufficient oversight effectively, because an excess use of force was not picked up at those times.

And finally, in relation to categories of evidence, category E is an exploration of

whether the evidence in the criminal trial of Constable Rolfe was contaminated. That is not what is sought to be done, your Honour. That submission can be quickly dismissed.

Firstly, I've said it previously, issues around the contamination of Constable Rolfe's account post-9 November have already been explored are clearly evidenced in the text messages potentially and were explored by Mr Merenda. Thirdly, if that evidence had been contaminated in the criminal trial, that is – and then that evidence given in the criminal trial, it is nevertheless evidence of an account and your Honour needs to get an account of what happened.

So, it is effectively contamination potentially as to the credibility and reliability of the evidence which is now available to your Honour in these Coronial proceedings. And it goes to the heart of the general order in relation to the investigation of deaths in custody.

Those appearing on behalf of Constable Rolfe say, at par 27:

> "It is one thing to re-canvas facts that were considered by the jury in reaching its verdict, it is another thing to seek to explore whether evidence given at a criminal trial was tainted"

The former may fall within the ambit of the Coroner's powers to investigate and that latter is not. Can I try and reassure my learned friends, there is – in no way am I urging your Honour to consider whether or not evidence given at a criminal trial was tainted.

I urge your Honour to consider the evidence that is now available to you in these Coronial proceedings and to make a determination whether or not, contrary to the general order that requires officers to be separated before a version is given, and contrary to the direction in that general order that every effort be made to preserve independent accounts, whether or not in fact accounts have been tainted.

And your Honour has available to you all of the evidence, including the evidence that was given at the criminal trial. Thank you, your Honour.

THE CORONER: Thank you, Dr Dwyer.

Does anyone else wish to make oral submissions on the objections?

MR BOULTEN SC: I do, your Honour, please.

THE CORONER: Thanks, Mr Boulten.

MR BOULTEN: So, NAAJA urges your Honour to pay careful attention to the submissions you're just heard from counsel assisting and in almost every respect, we adopt what Dr Dwyer just said. The approach that I will take this morning is pithy.

Firstly, in relation to the history of the objections and the challenges to your Honour's jurisdiction and the scope of the inquest, much as already been said in writing and this morning by Dr Dwyer. There is some thought that at least the attempt to reventilate the objection to text messages ought not be considered by your Honour because it is an abuse of process to do so.

That may or may not be correct, but the history of the objections in relation to that particular pocket of evidence is very important. The attempt to provide some nuance to the objection as reflected in an email circulated to the parties, and I think to your Honour yesterday, does not effectively deal with any differences that are said to arise from the current objection compared to the previous objection.

In par 13 of NAAJA's written submissions that were filed this morning – yesterday afternoon, we offered to provide the court with a chart that extends the information on the chart of objections that Mr Rolfe's counsel provided to the court some time ago. And we now have that chart, which is available for your Honour's consideration, and we have copies for the parties.

This deals with the timing of objections, including the objections directly concerning the text messages. This is, we think, entirely accurate. There are two extra columns that have been added to the chart provided by Constable Rolfe. The column second from the right is the date in which the relevant evidence the subject of objection was first included in the brief.

And the column on the right is the date that Constable Rolfe first made an objection to the evidence. As Dr Dwyer pointed out in her submissions this morning, some of the evidence that is the subject of objection was included in the brief as early as April, pre-dating important directions hearings in which there could have been no doubt that there was to be consideration of the very issues that are now the subject of objection and we have been over this territory before but there was no objection taken to the evidence either of individually or as a form of attack on the scope by Constable Rolfe at any relevant time prior to our hearings here in Alice Springs at the start of the actual hearing of the inquest.

So far as the text messages are concerned, your Honour has actually dealt with them. There has been no significant change in circumstance that would justify a revisiting of your Honour's ruling. There has been further evidence since your Honour's ruling but not such as to warrant a further consideration of the ruling rather, the further evidence that has been received has done nothing more than highlight the relevance, the significance and the statutory propriety of asking people about these text messages. What is more, when Mr Rolfe and/or other authors of those messages are called to give evidence it will become even more clear why they are relevant, either to underscore the suggestion that has been made by many police officers in their sworn testimony already, that the sentiments are racist, sexist and completely inconsistent with the duties of a sworn police officer or not.

As Dr Dwyer has said, there is left open the possibility that Constable Rolfe and the other author or authors who are to be called as witnesses will convince you that

in fact this was just an example in each instance, of a police officer under stress, letting off steam and that it should be ignored for any other purpose to your Honour's fact-finding role in the inquest. That's possible. It's not the most likely outcome as we see it at the moment but it's possible. But whether it's one or the other, whether it adds to the body of evidence at the moment about the racist attitudes of Mr Rolfe and some of his colleagues or not, it is relevant and your Honour should receive the evidence and there is no reason to review your ruling.

If this attempt to re-litigate the ruling is not an abuse of process then there are powerful discretionary reasons not to re-agitate the ruling or to re-rule on the matter. But whether it is an abuse of process or whether there are simply discretionary reasons not to contemplate the re-agitation of the ruling and, if your Honour chooses to re-rule, the result should be the same and it doesn't matter for real life practical purposes how to characterise what is going on here legally, because the end result should be that your Honour simply says, "I have ruled on this and I don't see anything that would change my mind about it, but for the sake or argument, if I had to re-rule on it my ruling would be exactly the same." So I am not saying that is the only way your Honour could deal with it, but that is one way that your Honour might deal with it.

We adopt everything that Dr Dwyer says about the statutory functions both in writing and this morning. We have attempted to reverberate our own written submissions from earlier in the proceedings. We have, in our written submissions, focussed on s 39 in some respects and we have spoken about - in par 23 we've spoken about the importance of hour Honour's own state of mind concerning the relevance of the information that is before you in the brief. This is a nuanced topic as it happens and again this is not crucial either, but we say that the terms of s 39 is a form of statutory requirement for your Honour to have a certain state of satisfaction. And it's a state of satisfaction that you have - and you are the individual who has to make a decision about the importance of each aspect of the evidence that is the subject of objection. And this is a very common statutory requirement and it's a requirement that involves an evaluation of nuanced determinative factors, the weighing of factors is not a science, it is a subjective view of how these things might operate. There is a boundary on the way you have to do it. It has to be reasonable, and that is an objective barrier or an objective boundary that requires you to exercise your thinking on the issue reasonably, in a way which will withstand objective scrutiny by others, including any other court, should they be required to look at it.

But, as has been said by others in this debate, reasonable minds might differ on some aspects of the evidence and information and both be reasonable. One thing is clear, in my respectful submission, is the longer this inquest goes on the more reasonable it is becoming to view the evidence that is in the brief as being relevant. We have seen evidence here which has developed in ways which has caused problems at the other end of the bar table that has interfered with the smooth running of the inquest for the very reason that the evidence is shaping up to demonstrate that there are real issues to be considered for, amongst other, about things such as racism, over-use of force, the degree to which this is an attitude or attitudes that are shared in the police in Alice Springs and in communities.

This is not looking like a last desperate gasp to hang hold of the original form of the brief but rather, it is demonstrating how the brief was solid in the first place, your Honour.

So far as the individual aspects of the objections are concerned, we mad submissions three weeks ago in writing. We have reprised them in our written submissions from yesterday. We agree wholeheartedly with the submissions that Dr Dwyer just made about the importance of the relevance of them and I don't wish to take up more court time about it, your Honour. We would submit that your Honour give a ruling very much consistent with the ruling that you made last time.

Just finally in relation to any particular problems with the text messages so far as they might affect the separately represented individual police or IRT members that have not yet had a lawyer stand up and question officers or made submissions. We say that the fact that they haven't been here with a voice at the moment, does not impact on relevance but rather it tends to show how these messages are relevant in that they now seek to be separately represented. Almost – I'll withdraw – probably because amongst other reasons, they will need to answer questions about their attitudes and about their motivations and about why it was that they decided to make – take particular steps. Whether they were acting within function; whether they were acting within power; and whether they were following orders or disobeying orders when decisions were made to take particular steps in the period leading up to the acts causing death.

If your Honour pleases.

THE CORONER: Thank you, Mr Boulten.

And I think Mr Boe also has some submissions, so I'm not sure which order.

MR BOE: I don't mind, your Honour. Whoever wishes.

THE CORONER: Mr McMahon?

MR MCMAHON AC SC: I'm happy to go next, your Honour.

For out part, your Honour, we adopt the previous submissions that have been given, both written and oral and we further adopt today's submissions of both counsel assisting and Mr Boulten for NAAJA. And I've had the benefit of discussions with Mr Boe and from what he's going to say we would agree with his submissions as well.

But there's one small point that we wish to make which might perhaps capture much of what's in issue today listed in the objections from Mr Rolfe's counsel. And that's to consider the surprise and the consternation of Superintendent Nobbs who quite incredibly had never seen the relevant videos until being in this court.

His consternation simply highlights, in our submission, how much remains unclear and unknown. And it's clear from how much there is yet to investigate further and how essential it is that this court does so. And many of the items listed, the eight items listed from Constable Rolfe's team are captured by those few moments, in our submission.

The videos on – because what Constable Rolfe's team say is that the objective evidence of the events, those events, is unassailable, in par 15 of their submissions. We would say that position is central to their submission today and it's untenable. The facts which are described as unassailable are anything but unassailable and if you saw nothing in this inquest but Superintendent Nobbs who reached that view.

Because on one view – and there are going to be different views – but on one view, looking at those videos is like looking at an undisciplined paramilitary force with an assault rifle going through houses searching out a target. I doubt this would happen pretty much anywhere else in Australia. How that came to pass invites a deep understanding to the background.

If the Northern Territory Police do have a dishonest person – and I say dishonest because of one of the items listed here on the recruitment, in the applications in Queensland, Victoria, Northern Territory, Western Australia – if the Northern Territory Police do have a dishonest person who appears to be racist – and I refer to the text dispute today. With a troubling list of use of force complaints – and I make no comment on whether he's exonerated or not exonerated, it's the fact of the long list of use of force complaints – who appears to have been suffering depression, from some evidence; who's there jumping fences unnecessarily; searching out a target; who then shoots a target, then this court needs a deep understanding of how all this happened and how it came to pass so that this court can make appropriate recommendations.

And that would require this court to have an understanding both of the state of mind of those involved and the state of mind as I defer to in Constable Rolfe's team's submissions and it's an argument well understood in law and it covers an extensive period of time which would well include items listed in this schedule from Constable Rolfe's team.

And also invites a consideration necessarily so that this court can make appropriate recommendations to prevent similar deaths in the future on how it came to pass by looking at whether, at this stage, looking at whether the recruitment processes operated properly, supervision operated properly, what was tolerated, what was sanctioned and how did such a person come to be deployed with weapons of lethal force with extraordinary personal power in these circumstances.

These are all matters which in our submission, are plainly relevant and because of that the evidence in issue, which is set out helpfully in Constable Rolfe's team's submission, should be (inaudible). Thank you.

MR BOE: Should I go next, your Honour?

THE CORONER: Mr Boe.

MR BOE: Thank you, your Honour. Your Honour, given, if I may say, the careful submissions made by those who have already spoken, we're down to five points that we wish to amplify and they largely do dovetail and of course accept the correctness of the submissions you've heard so far.

The first is one which Dr Dwyer pointed to at the outset concerning what the effect of your Honour's ruling in par 11 of ruling number 2 and in particular in addition to the noting that there were no objections of the kind your Honour contemplated being raised whilst the evidence was heard. That in effect the part of the application by Constable Rolfe is that your Honour should not countenance – well our submission is that you should not countenance objections now being made on a retrospective basis.

If in fact Constable Rolfe wishes to make submissions about weight, the appropriate time for that is in closing submissions, but the evidence has been properly received by you, in our submission.

The second point in relation to the statutory framework, we simply rely upon and gratefully adopt that which was put before your Honour by both Dr Dwyer and NAAJA. We ourselves I think said very similar things in par 6 to 24 of our written submissions of 7 September. I won't rehearse them for now.

The third point – the next three points perhaps go a little bit further than some of the things that have been canvassed. A theme of Constable Rolfe's objections is a line of reasoning that goes there is evidence that conclusively establishes certain facts about Rolfe and Kumanjayi's death. In accepting those facts, it is irrelevant to enquire if the matters that go beyond those facts.

Another thing is that there is evidence of certain matters and therefore it is irrelevant to enquire into those matters. There are at least two points we wish to make. First, whether the evidence conclusively establishes the facts asserted by Constable Rolfe and whether there is evidence establishing certain facts are properly matters to be determined by your Honour as part of this inquest.

Your Honour may ultimately accept Constable Rolfe's submissions about what the evidence does or does not establish, but that should not be determined by your Honour as part of your findings – that should be determined by your Honour as part of your findings, not at a preliminary stage.

To take one example. Whether or not your Honour accepts Superintendent Proctor's finding that systemic racism played no part in the conduct of individuals on 9 November is a matter for your Honour to be determined after hearing the evidence. Similarly, it is a matter for your Honour to determine whether the evidence of Rolfe's historical use of force, body-worn cameras and so on, bore upon the events of Kumanjayi's death in circumstances surrounding it.

Your Honour might ultimately accept Rolfe's submissions that it didn't but that does not mean that your Honour should not consider that evidence now.

Second, the logic of Constable Rolfe's submissions simply do not – does not follow.

For example, even if you ultimately accept that the immediate events surrounding Kumanjayi's death were as depicted in the body-worn camera footage, it does not follow that it is irrelevant to consider whether systemic racism or issues with community policing influenced those events coming about. Of course that is relevant to an inquiry into the circumstances concerning his death.

The fourth point is that at par 28 of NAAJA's and addresses the available evidence concerning Constable Rolfe's application and recruitment to the Northern Territory Police Force. In our submission, your Honour should receive this material in order to consider whether findings and recommendations should be made for the following reasons, and there are four.

Firstly, a potential recruit's prior training and use of guns must be relevant to their suitability to bear guns in their role in police. Their honesty, candour and integrity must also be relevant.

Secondly, Superintendent Proctor's report reveals that attempts to access a recruit's ADF information was abandoned by police in the recruitment process because there were delays and obstacles in obtaining information about Constable Rolfe's particular ADF history. That is a matter that should be considered.

Thirdly, there is clear evidence that training and service of the ADF may have a significant impact on a soldier; both PTSD, according to Professor McFarlane and moral injury according to Dr Dobuss(?) which may explain why Constable Rolfe reported that he was suffering from depression in October 2019.

And fourthly, Assistant Commissioner's four page – in his recent statement, recorded that there was a very high proportion – I'll take that back, a high proportion of ex-military members in the Northern Territory Police Force and there is evidence that there is an even higher proportion in the TRG.

It may be that it is found that military training in service makes a better police officer, or it may be that such training and service hinders a police officer's capacity to accommodate cultural factors in discharging the complex role that they play, given that more than 90 per cent of those are Indigenous.

Even accepting Constable Rolfe narrow view of your Honour's function, those are matters that are relevant to the circumstance of Kumanjayi's death. On the one hand, and we've heard a lot of evidence about this, it's a death of an Indigenous person with a very tragic history. But he was killed at the hands of a police officer with a background in military training and service.

The fifth matter is that we submit that discrimination can be structural as well as individual. The evidence at least raises the possibility that a number of the decisions on the evening were informed by assumptions about the community including that there would be a recourse to violence in the face of news about the shooting and death of Kumanjayi.

Identifying structural inequality in other forms of discrimination can help to make sense of the tragic trajectory of Kumanjayi's life, which is probably the subject of this inquest, even on Constable Rolfe's view. Not only Kumanjayi, but many other in the Yuendumu Community have suffered the effects of structural inequality and it is possible that police systems and interaction with Indigenous people play a part in perpetuating that.

The final point, and it's a very small and nuanced one, your Honour, we adopt the submissions in writing made by Mr Boulten just then about s 39. But we want to precisely submit to your Honour that we contend that your function under s 39 should not be viewed as being about your Honour's state of mind or subjective assessment of the material, rather it contemplates the exercise of discretion to be exercised reasonably and with "judicial detachment and fairness".

That last phrase is from what Deane J said in the case of *Dare v Dietrich* [1979] 37 FLR 175 at pages 180 to 181. We will provide a copy to your Honour in due course. So, it is in relation to exercise - a discretion to be exercised reasonably with judicial detachment and fairness in the circumstances of the particular Coronial.

Your Honour, those are our submissions.

THE CORONER: Thank you, Mr Boe.

MS MORREAU: Your Honour, if I might just briefly - - -

THE CORONER: Yes, Ms Morreau.

MS MORREAU: - - - rely upon the written submissions that have been filed on behalf of the Brown family on 7 and 12 September and respectfully agree with and adopt the submissions that your Honour has heard this morning from all of the parties, including the written submissions filed by NAAJA.

The point remains that, and we urge this in the circumstances, that given the nature of your Honour's functions, care would be taken not to unduly circumscribe the taking of evidence at this point in the proceedings. And two matters in relation to Constable Rolfe's written submissions in support of objections in relation to receipt of his disciplinary history.

The question, we say, of natural justice raised in those submissions is separate to the question of receipt of the evidence to meet your Honour's functions. And finally, on the issue of drugs, of course, the absence of evidence of the use of

recreational drugs at a time proximate to this night is exactly the point of the matters to be investigated before your Honour and the adequacy of the testing in relation to significant events such as this.

They are all our submissions, thank you, your Honour.

THE CORONER: Any other submissions from the back Bar table? No? From the front Bar table? Dr Freckelton.

MR FRECKELTON: Thank you, your Honour. At the outset of this inquest, your Honour, we outlined the approach being taken by the Northern Territory Police Force to the conduct of this inquest and it may be timely to reiterate that. We do not come here seeking to reduce the scope of the inquest. We are not taking technical points.

In fact, the police force welcomes what is taking place and that's the parties have goodwill and reflectiveness to enhance the quality of policing in the Northern Territory. The police force here seeks to be a modern force when viewed with approaches of inclusivity and tolerance, recognising the adversity of the population of this jurisdiction.

But it is a police force that faces particular challenges, given those who mostly is asked to exercise its powers in respect of it, the geographical breadth of its jurisdiction and urgently, constraints of resources. This police force, like all others, has particular powers which it can wield and it is important that it wield those with restraint, moderation, tolerance and cultural sensitivity.

Much of the time, it does very well. Fortunately, this court hears very, very few as is comparable to this and that is significant. But we are here in truly tragic circumstances. The attitude of the Northern Territory Police Force from the Commissioner downwards is to learn; to listen actively; to participate in a restrained way; and to learn so that it can do better.

I spoke with one of my colleagues, I won't identify who or what it was about. But that colleague before court today was urging creativity and flexibility in response to various matters. And that is a conversation to be welcomed and we'll do that out of court. But within court, what we seek to do is to provide assistance, to furnish material, to test matters out.

And our hope is that the fruits of this investigation will enable active steps to enhance the quality of policing in the Northern Territory. Those are not just words. There is no place in the Northern Territory Police Force for racism, sexism, homophobia, cultural insensitivity, disrespect or comparable qualities.

The Northern Territory Police Force expects its members to represent contemporary values and that it expects its members to be compliant with the hierarchical structure and to respect that structure. We welcome hearing perspectives on whether those qualities have been manifested by officers in this

inquest and should your Honour find that they have not been, that will assist those in the executive to take the measure necessary in the future to ensure that appropriate values permeate all aspects of the operation of the Northern Territory Police Force within the bounds of the legislation applying to here in time.

So it is in those circumstances that we come here, listening actively, not taking technical points, not endeavouring to persuade your Honour to take a narrow, rigid or constrained approach, one which is unduly circumscribed to the parameters of your statutory responsibilities.

We do, however, say to your Honour that what you do must be within the statutory boundaries of what is permitted to you and inevitably there are some constraints that have been imposed and reflected upon by other coroners and by other courts within Australia.

Our learned friend, Dr Dwyer, made reference to s 34 of the *Coroners Act* and that requires of your Honour of course, that you make certain findings under s 34(1)(a) if you can, if possible.

Section 34(2) it allows your Honour - it doesn't mandate you in this respect - t to comment on a matter including public health or safety or the administration or justice connected with the death being investigated and your Honour has particular powers with relation to deaths in custody.

Nathan J did reflect upon this issue and we differ a little with our learned friend assisting you in that we respectfully submit to your Honour that the legislation applying as long ago as 1989 in *Harnsworth* and reflected on by Nathan J, was relevantly comparable to that which binds your Honour. The legislation in Victoria so long ago mandated various findings but also permitted a coroner to comment on any matter connected with the death, including public health or safety or the administration of justice. Those words are very very similar and relevantly similar, we submit, to those which apply to your Honour.

Now, the reason was make that point, your Honour, is that it is our submission and this treads a line between what has been said to you by counsel assisting and what is being put to you on behalf of Constable Rolfe. Nathan J said this and we respectfully say it, it is worth adverting to the words used by his Honour because they've been applied so very often subsequently, and with good reason.

> "The Coroner's source of power of investigation arises from a particular death"

There is reference to fire, I am omitting that, your Honour.

> "A Coroner does not have general powers of enquiring or detection. The inquiry must be relevant in the legal sense to the death"

Which brings into focus the concept of remoteness. Of course in this case it was about prisoners who died within a particular unit at the prison that existed in Melbourne.

> "But, of course, the prisoners would not have died if they hadn't been in prison. The sociological factors which related to the causes of their imprisonment should not be remotely relevant…….are not envisaged nor empowered by the Act, they are not within jurisdiction power."

And many other decisions including the *Doogan* one to which our learned friend made reference, reflected upon what Nathan J said.

We say that your Honour can receive useful guidance from his Honour in this regard and it is about parameters, and this is something raised by our learned friend. Ultimately it is a judgment call for your Honour and it is certainly a discretionary matter, but perhaps the test best to be applied by your Honour in reflecting on what matters your Honour should inquire into, is whether our inquiry in respect of any given topic is likely to arrive at coherent, concise findings in respect of the statutory matters in respect of which you are obliged to make findings.

Now, that is not to impose a narrow constraint upon your Honour but inevitably it imposes some limits. Your Honour would not want to enquire in the broad about the phenomenon of racism in the Northern Territory.

If your Honour inquires into and reflects upon racism as an example, that has the potential to be relevant and we do not shy away from that and we welcome whatever your Honour is able to learn from the evidence that becomes available to you in due course. But the relevance of racism in this case must be constrained by how it impacts upon the conduct of the person or persons who contributed to the cause of death of Kumanjayi . Now, that is but one example of the kinds of enquiries which could be undertaken. One could look into the phenomenon of housing or nutrition or availability of services in the broad in remote communities, or more particularly Yuendumu.

In our submission that could end up being problematic in terms of the Harmsworth phenomenon unless it can be sheeted but not in a narrow sense, to the causes antecedent to and contributing to the death of Kumanjayi but in some way which is material to what brought about his death.

We would like to say one or two things about the issue of propensity. We reiterate a note of caution in respect of propensity or tendency evidence as it is more commonly now called. It is one of the most problematic areas of evidence law and for a particular reason - it is so prejudicial. It can be diffuse. It can lead to prejudicial inferences if the analysis of what underpins tendency is not identified rigorously.

To take examples from what has been adverted to by our learned friends. The fact somebody may have been the subject of a number of complaints is not properly construed to constitute a proper basis for their having a tendency to behave in a

particular way. The fact that there have been a number of investigations into their conduct likewise. The question is what they have done before and if that is sufficient to constitute properly a fairly analysed pattern of, a tendency toward, a propensity for a relevant form of (inaudible).

Now it could be that prior conduct shows impetuosity, an inclination to ignore instructions or orders, a preparedness to use more force than is justified in particular circumstances. But a fair and rigorous analysis is required to analyse whether proven instances of that prior conduct are available, shown on proper evidence and then whether those prior incidents can fairly be interpreted as manifesting that tendency or propensity.

And we simply urge upon your Honour a rigorous approach in that regard. An example of where that may not be reasonable is that if a person had a habit of not switching on their body worn footage but they did on the relevant occasion, what can your Honour discern from that. Maybe you can identify some kind of attitudinal issue but that would be a step-in logic that we would submit to your Honour needs to be undertaken very cautiously.

So as an example of where relevance again and rigor of analysis should form the cornerstone of how your Honour reflects upon what evidence you receive and then how you interpret that evidence which ultimately you do take. We are comfortable, your Honour, that that is a process which should be undertaken ultimately at the right time because you need to know what evidence is available and then your Honour can start to work through whether it is going to have, at its highest, utility for you in your decision-making process.

My learned friend, Dr Dwyer, has, and our learned friend Mr Boulten as well, referred to the content of the Coronial investigation. And in our respectful submission, they were right to put it in that way, because there is an important distinction that needs to be made and to remain at the forefront of all of us at the Bar-table and to your Honour too, between a Coronial investigation and the criminal investigation.

The criminal investigation was directed toward a particular end and the objective was the fair conduct of the criminal trial. The trial has been held and the jury's verdict is in. What your Honour is doing is different materially and much more extensive than that process. And this inquest should not afford an opportunity to commentate upon a criminal investigation, to re-evaluate it, to reflect upon whether improvements could have been made to it, because that is the province of a criminal investigation.

And your Honour can be confident that certainly the Northern Territory Police and no doubt the DPP, reflect upon cases won and cases lost to learn necessary lessons. The issues for your Honour, with respect, is what is before you, whether there are issues at insufficiency, whether there are enhancements that could be made to processes, including for instance, overlap between Coronial and criminal and accountability.

But what is absolutely manifest, we respectfully observe, is that this is a very extensive Coronial investigative exercise that is being done highly competently by those assisting you, who are now in, I think, third generation and that it continues. Until it continues to be added to the brief and we make no complaint with that. And to the extent we can contribute to it, we're open to doing so and we'll respond as requested.

Our point in this regard then is this. There appears to be no reason to be critical of your Honour's investigators, your counsel assisting or anyone else in respect of the extent, rigor of the Coronial investigation. And it will be constructive to focus upon that and we suspect that to the extent there is any question arising about the integrity of sufficiency of the investigation, that can be dealt with in very short compass by quick identification of the breadth and professionalism of what has been and what is being investigated.

And it will be constructive to keep separate and distinct focus upon the Coronial as against pressing the historical aspects of the criminal investigation. Now we say that because it does seem to us, with respect, that a number of the issues raised by our learned friends on behalf of Mr Rolfe, continue to relate to the criminal investigation, to make some points in respect of that and to seek to constrain your Honour's Coronial investigation by reference to what was done in the criminal investigation and to attempt to make some kind of an argument that if there were insufficiency or any criticism to be made of the criminal investigation which resulted in Mr Rolfe being found not guilty, that in some way has contaminated your Honour's Coronial investigation.

It is important to identify with rigor again what it is that is being asserted. Because when one does so, the absence of justification for such a position becomes apparent. And we urge your Honour to retain a clear perspective on the relevant lines of delineation and we submit that if your Honour does so that will assist in your Honour's decision-making about admissibility, about scope, into which your Honour is being invited to undertake further enquiry, whether that exhortation is implicit or somewhat covert, that's what's happening. We say that your Honour ought not to succumb to that temptation.

Your Honour has already ruled on key aspects and it is important that there be as much clarity as possible so that we can proceed with this investigation, open inquest in as orderly and efficient a way as possible and we adopt what was said earlier about the stress that this process is causing to persons.

There is no doubt that from our perspective it must be causing enormous strain for family members who are respectfully participating in it here at this court and in Yuendumu and in many other parts of the Northern Territory. And we simply make the point from our acquaintance with and exposure to them, it is doing the same for police officers who are also endeavouring to assist your Honour.

It is an exercise in soul searching and agonising and ruminating that many of them are properly being asked to undertake and it comes at a cost. There is good will. There are proper attempts to assist your Honour but it is difficult and the sooner that it can be brought to your Honour's completion with your Honour's findings and comments and recommendations, the easier it will be for everyone concerned. Thank you, your Honour.

THE CORONER: Thank you, Dr Freckelton.

Mr Merenda?

MR MERENDA: Thank you, your Honour. Your Honour, I can tell you that I'm not intending to be long in my reply. I should have said at the outset, we rely on our written submissions.

THE CORONER: Thank you.

MR MERENDA: - - - 27th and 28 September 2022 consistently with the practice that was dealt with on the last occasion (inaudible).

THE CORONER: Sure. I haven't marked the others. I'm not even sure where we're up to but we'll make sure yours get marked, Mr Merenda and I'll do the same with the others and we'll distribute a further list so that everyone is aware what is on that list.

DR DWYER: Thank you, your Honour. And your Honour – sorry to interrupt my friend – but I anticipate there will be an application for access to those documents as well from the media, so if there's any objection to that perhaps the parties should notify your Honour, but they are of interest, I'm instructed.

MR MERENDA: (inaudible). Your Honour, the only two things that I want to deal with colloquially as the history of the objections and that was dealt with at some length by Mr Boulten and Dr Dwyer. And I'd just really like to deal with the suggestion today that there is a tactical approach taken by Constable Rolfe in relation to the bringing of these objections.

Now dealing with the history (inaudible) it's important to start on the premise that your Honour ultimately held on the last occasion that our objections as far as they related to scope were (inaudible) in the sense that the appropriate time for the bringing of those objections was as and when the evidence was sought to be adduced.

Now I'll come back to the effect of that in a moment when it comes to addressing the question of tactics. But there's been a sentiment that's been expressed about the time wasting, it would seem again in relation to the bringing of these applications. And it seems to be one of outrage the fact that we again raise these objections in relation to scope. And the answer to that is we were asked on the last occasion (inaudible) that you need to bring those applications as (inaudible) saw fit.

THE CORONER: Sure. Once the inquest had started in proper that was the ruling and request that was made. That doesn't preclude these objections having been raised before the inquest proper started.

MR MERENDA: That might be right. But at the end of the day we were apparently (inaudible) in these matters. I mean the reasoning can't cut both ways. There is - - -

THE CORONER: It can. There were a number of directions hearings during which time these issues could have been raised and resolved.

MR MERENDA: (inaudible) have been able to be raised but it was premature at the end of this inquest to deal (inaudible) scope. It would certainly have been – and I'm not - - -

THE CORONER: And we could have made that ruling about scope. But now we've moved on from scope and we're talking about objections to specific aspects of evidence.

MR MERENDA: I understand that. But the point I make (inaudible) we're here right now (inaudible) and ultimately (inaudible) last occasion is that we were to make the objections as the evidence arose. Now I'm not making a criticism of your Honour, I'm simply pointing out the (inaudible) as opposed to dealing with these objections later on (inaudible) we were asked by counsel assisting (inaudible) to deal with these issues. So I'm not - - -

THE CORONER: We do need to deal with the issues and we are here today and we are dealing with them. That doesn't resolve the fact that there were a number of directions hearings at which time questions of admissibility could have been raised. They may well have been able to be addressed at that time. It may be that they may well also have had to have been delayed until we came to the evidence.

But we're here now, so let's move on.

MR MERENDA: The point I'm making though is in relation to this application, criticism has been made up-hill and down-dale about the fact that this application seemingly a waste of time. And the point I'm ultimately making (inaudible) is that we are here today because we were asked to be here today. (inaudible) potential issues as and when they arose throughout the course of the inquest. But we are here today because counsel assisting intimated to us that is the desirable approach to take in relation to the objections.

And so that needs to be made fundamentally clear. Now in terms of the way in which we were told that the objection to the evidence was ultimately dealt with and approached by Rolfe, (inaudible) the fact we were told (inaudible) that that would occur after the evidence was sought to be adduced. And that has a relevance in the context of what's been suggested as being, whether directly or implicitly, there is a

tactical approach that's been taken by Constable Rolfe in relation to these objections.

So I wanted to put some examples (inaudible) in relation to that. And the first one was in relation to questions of racism (inaudible) in the SMS messages. Now the second example was something that occurred in relation to Assistant Commissioner Wurst. So those are the two areas I propose to (inaudible).

So in relation to your Honour's ruling (inaudible) and the approach that's followed, was that the text messages were the identifiable (inaudible) MFI C now. And the point is that those messages have not been tendered in these proceedings. Mr Edwardson and Constable Jolly – Sergeant Jolly (inaudible). Sergeant Jolly was then questioned, took objection to those messages being (inaudible) in the course of her question and he took that objection on the basis that it was premature to deal with those matters. And, over objection, that was allowed. And so there has been no objection in the time that's followed since then in relation to that approach.

Now that's important because we took the approach after your Honour's ruling for the time to object to the messages was when they were ultimately (inaudible) sought to be adduced. And so that we say was the death knell to the suggestion that there's been a forensic approach taken by Mr Edwardson in relation to that. And given the way that this has unfolded, it's unsurprising that he might seek to re-examine on issues relating to that. We don't know what your Honour's ruling is going to be in relation to that particular issue or objection.

Now in relation to Assistant Commissioner Wurst, I can say I did make a forensic decision, because at the end of the day, when you deal with these objections and to rise on my feet and make an objection might fragment what was already a tight schedule (inaudible) and so basically fragment (inaudible) entitled to (inaudible) given that we face those issues now (inaudible).

So I think that deals with that.

THE CORONER: I can reassure you I will consider all the objections that you have raised.

MR MERENDA: If it please the court. Thank you

MR BOE: Your Honour, before your Honour rises can we just raise just a matter of courtesy on a personal level. Counsel now appearing for the Walker, Lane and Robertson families may not be back in Alice Springs for the rest of the inquest. It's not out of a lack of interest it's just a (inaudible) capacity. But we are hoping to have at least a legal representative at the Bar table going forward.

This has been affected a little bit by the rescheduling. I had hoped, as I declared, to be here for the first four issues that have been raised. I'm very mindful that's not finished. We are trying to recalibrate our schedules and may come back but we're just indicating that's our position.

THE CORONER: Thanks Mr Boe.

DR DWYER: Your Honour, I have brief submissions by way of reply. Are you content to hear them now? They're no longer than five – perhaps – a matter for your Honour.

THE CORONER: Look, I think we'll just take the 15 minute adjournment and I'll hear the submissions in reply after.

ADJOURNED

RESUMED

THE CORONER: Dr Dwyer?

DR DWYER: Thank you, your Honour. Briefly, your Honour, I thought it important to note – well, might I start, your Honour, by endorsing the comments of learned King's Counsel appearing for the NT Police when he put on the record the constructive approach that has been taken by the Northern Territory Police.

Might I reiterate that that is from the absolute outset of this investigation, so much so that, when your Honour looks at the Proctor report, which is the overarching report of a senior investigator at that time, the report – I said earlier in my preliminary submissions, it's 170 pages long. It is extremely comprehensive.

And I noted in passing that it covers the issue that are being ventilated and are the subject of objections. This is page 168 of that report. It notes that as part of its response to the shooting incident at Yuendumu and the subsequent death of Kumanjayi, the Northern Territory Police established an organisational response committee led by Deputy Commissioners Murphy and Smallpage.

The purpose of the committee was to identify the main issues arising from the Yuendumu incident and to commence actions and activities to address those themes to prevent similar issues occurring in the future and to provide comfort to the family of Kumanjayi, the community and the Coroner that issues have been identified and changes are occurring. "The themes identified were as follows -", this is just quoting directly from the report.

> "The themes identified were as follows:
>
> Recruitment procedures;
> Vetting and integrity checking;
> Procedures around false representations;
> Use of force and related training;
> Policy, procedure, practice and compliance;
> Cultural awareness;
> Conscious and unconscious bias;
> Investigative response;
> Dealing with intellectually impaired persons;
> Command and control;
> Training records and status;
> Early intervention models;
> Drug and alcohol testing;
> Officer mental health review of the IRT."

In my respectful submission, that overview report has been extremely important in the preparation of this inquest. And you see that the themes that were identified there include the themes that are now the subject of objection in one form or another.

But from the outset, it appears from that report, and I anticipate submitting to your Honour, that the Northern Territory Police Force have taken an approach in this inquest which is constructive and thoughtful and penetrative in looking at those issues, which are deep and wide necessarily, but are of course all within the scope of your Honour's coronial inquiry.

And I am mindful of that scope and will remain so. But it is often said that there are concerns about police investigating other police or police being the investigators in coronial inquests.

What your Honour has here, it appears from Commander Proctor's report and the comprehensive brief of evidence that was put together by the Northern Territory Police Force for the most part with the assistance of the counsel assisting team is an overview and an in-depth look at issues that will be relevant, in all likelihood, to your Honour's enquiries.

And might I say that we are extremely grateful for that approach taken, because it makes it possible for your Honour to do your job so effectively, in my respectful submission.

Included in that report of Commander Proctor is a review of the historical use of force incidents that it is suggested – I'll withdraw that, that it could be identified for Officer Rolfe and your Honour will recall the report of Sergeant Barram which is summarised by Commander Procter where he makes a number of observations in relation to the use of force by Constable Rolfe.

Having reviewed historical use of force incidents in which Constable Rolfe had been involved, he identified five incidents which, in his opinion, where the force was excessive and inconsistent with the use of force philosophy and the ten operational safety principles.

And in his view, in those five incidents, Constable Rolfe chose to use a tactical option that was not reasonable, necessary, proportionate or appropriate and his choice of option in those cases had resulted in injuries to subjects and the potential for injury to himself which could easily have been avoided.

Importantly, Sergeant Barram identifies in that report, and that is then summarised by Commander Proctor, that in his opinion, there was a tendency for Constable Rolfe – I withdraw that. He says that Constable Rolfe consistently failed to use effective communication as a tactical option to defuse the situation and appears to prefer to go hands on which is not in line with the force philosophy.

So, he identifies a number of events where there was a failure to use communication as a tactical option. In his opinion, Constable Rolfe demonstrated a tendency to want to get his man, no matter what, and paid little or no regard to the consequences of his actions, which had resulted in quite severe and totally unnecessary injuries to subjects in some cases.

That was his opinion having reviewed a number of incidents and that opinion, in my respectful submission, is likely to be relevant for your Honour's consideration and of course, it is likely to be relevant to be able to put those matters to Constable Rolfe so that he has every opportunity to respond to them.

I understand that Freckelton and the counsel assisting team are ad idem, in my respectful submission, with respect to the scope of your Honour's inquiry. I don't understand there to be any significant difference between us.

One of the examples that we used was the issue in relation to the body-worn video and whether - a caution for your Honour effectively, with respect, to ensure that when you're looking at the evidence of body-worn video, if you had an example of Constable Rolfe having failed to turn his body-worn video off on other occasions, there's no need to look at – or not turn it on, there's no need to look at them in great detail if, on this occasion, the body-worn video was used, and I accept that and appreciate that.

On the other hand, I note that your Honour may see in the text exchanges between Constable Rolfe and another officer, text messages that suggest that body-worn video may have been used to manipulate the evidence that is then available, because it suggests that certain things are said as a way of acting on the body-worn video.

There is commentary over the top of what is happening, in effect to act so that the evidence is manipulated. Now, if that's the case, the fact that the body-worn – if that is the case and Constable Rolfe, I anticipate will be asked about it, the fact that the body-worn video was on and captured this incident is relevant because there is commentary while that body-worn video is being used.

You will recall the text messages about, "And the Oscar goes to - ha ha" and that may then be relevant.

An issue as it arises of course and it is accepted by parties that their text messages reveal racism and then causes reflection on that about conscious and unconscious bias.

If racist views were being expressed by persons who are members of the IRT - are the Alice Springs officers, and certainly evidence of - there is evidence in those text messages of racist views being expressed by Constable Rolfe, then what is your Honour to make of that? Well, certainly Constable Rolfe will be asked some questions about that, as my learned friend, Senior Counsel from NAAJA identified, what does it mean and how did it, in fact, reflect on previous behaviour if it did?

But also, your Honour, it may be relevant to your recommendations function because if those views were known about or indeed, expressed by people at the sergeant level and, as we have heard, at the sergeant level it was extremely important in terms of leadership for young officers. It can't be that those views are

allowed to proliferate because they may well effect on behaviours and no doubt the Northern Territory Police Force will be anxious to make sure that those at the sergeant level are not participating in that sort of language going forward, and are demonstrating appropriate leadership so that we don't have racist messages being exchanged or racist words being exchanged leading to conscious or unconscious bias.

So it may well be directly relevant to you recommendations power and no doubt it is also, of course of great importance to the Northern Territory Police Force and they have expressed that to date.

So I just accept absolutely that there are boundaries - statutory boundaries - on your Honour's functions, in spite of the breadth of your Honour's inquiry and we will be ever mindful of those.

In my respectful submission none of the eight objections should cause your Honour to restrict any of the evidence that is available currently and it is evidence that has been available from the outset of this coronial inquiry, thanks, in large measure, to the efforts of the Northern Territory Police Force and the constructive and helpful approach that they have taken from the outset and continue to take. Thank you.

THE CORONER: Yes. Thank you for all of those submissions. I think they have provided significant clarity around the issues and I very much appreciate thought and care that has been demonstrated by counsel in raising and also addressing the issues raised.

I will consider those submissions. Any additional submissions that are provided next week, which will also, if they are provided, be provided to the other parties and if anyone - if there are additional submissions, if anyone wishes to respond to those I will be asking for responses in writing and we will communicate with you as to when we would like those reponses received, but otherwise we are returning to sit again on 3 October, is that correct or the 10th?

MR BOE: The tenth.

THE CORONER: Tenth of October.

DR DWYER: And, your Honour, we will, of course, distribute a witness list prior to that time.

THE CORONER: Yes.

DR DWYER: Or witness schedule.

THE CORONER: We can adjourn.

ADJOURNED