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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 7 MARCH 2023

(Continued from 06/03/2023)

Transcribed by:
EPIQ

THE CORONER: Dr Dwyer.

DR DWYER: Your Honour, the first witness this morning is the emeritus professor, Jude McCulloch. Her statement is found in the brief of evidence at 10-31A. And Professor McCulloch I think should be on the line.

THE CORONER: Great.

DR DWYER: Your Honour, Professor McCulloch will have evidence taken by Mr O'Brien. So after she's sworn in he could stand up.

THE CORONER: Great. Thank you.

JUDE MCCULLOCH, affirmed:

THE CORONER: Mr O'Brien.

MR O'BRIEN: Thank you, your Honour.

XN BY MR O'BRIEN:

MR O'BRIEN: Good morning, Professor McCulloch. Can you see and hear me?---I can see and hear you. Thank you.

My name is Connor O'Brien and I'm appearing on behalf of the Parumpara Committee. You understand that, don't you?---I do.

You've made a statement to this court dated 5 August 2022, correct?---Correct.

And to the best of your knowledge the contents of that statement are true and correct?---To the best of my knowledge it's true and correct.

Professor, could I ask you to tell her Honour a little bit about your present role and your qualifications?---Yes. I'm an *emeritus* professor of criminology at Monash University. I've been an academic for approximately 20 years until very recently. My area of expertise and PhD study was in the area of the militarisation of policing. I published a book called *Blue Army Paramilitary Policing in Australia* in 2001. Since then I've continued to – since that time I've continued to take an interest and research in the area of police militarisation and in particular Australia's counterterrorism response, along with other aspects of policing. This has been a major stream in my research activity for the last 20 years or so. I have been contracted and funded to work with Victoria Police at various times on elements of policing including from 2005 to approximately 2009 on the topic of counterterrorism policing. I've published numerous books, about 100 journey articles in peer review publications. I publish in professional journals and magazines on the topic of policing and justice and sometimes the militarisation of police. I'm a member of the Australian Academy of Social Sciences which is – I'm a fellow of the Australian

Academy of Social Sciences, which is an academy in which peers elect other fellows on the basis that they've made a distinguished contribution to an area of research and are recognised as an expert, an outstanding expert on that topic.

Thank you, Professor. The first topic that I'd like to canvas with you is the issue of militarisation of police forces. Could you explain to the court what you mean by the term militarisation?---What I mean by the term militarisation is the integration of military philosophy and military style operations into policing. I would say unpacking that a bit more, there's a number of dimensions to that. The first one that I would point to and which is the most obvious is the material dimension. By that I mean when police forces adopt weapons and equipment that is more frequently or more akin to that which we'd expect to find in the military. So this would include, for example, high powered weapons like semi-automatic weapons, long rifle, like AR15s. It might include armoured vehicles, tanks and a whole lot of different types of equipment and munitions that one would ordinarily associate with being used by the military in conflicts or wars. Another dimension is cultural. And this is a more subtle dimension but it relates to police adopting a warlike or warrior mentality and approaching the use of force, in particular in a way contrary to what is required by police. So police typically and universally, at least in the democratic world, are required to use only minimum force. Whereas the military can use more overwhelming force. And while the success of many - of police operations is to be measured by the extent to which this can be avoided, that's not a criteria for success in military operations, in fact quite the opposite. So under that cultural dimension we would expect that the military mindset comes to the fore rather than policing by consent. The other dimension is operational and that looks at the type of tactic that police most commonly rely on. And there you're looking at militarised police, training through and frequently using very high levels of force. And in fact, one of the definitions that leading scholars have used in this area, talking about police militarisation, particularly in the US, it's about the instantaneous use of force, and not always as the last resort. And the final dimension is operation. So, organisational, I should say. And that organisational dimension is to what extent para-military units are integrated, or part of the policing organisation. As they – have they been established, are para-military units established within the policing organisation. How big are they. What type of emphasis is there on them. And how contained they are. Are they folded in, or spread out into every day operation, or are they contained very tightly to, for example, counter-terrorism and high-risk operations?

Professor, Deputy Commissioner Smalpage, has given evidence to this court the term militarisation in reference to police is pejorative term. Do you have view on that?---Yes I do. My view is that it's not a pejorative term. It's a descriptive term. So scholars in this area, and indeed, practitioners, police practitioners have been using the term militarisation, to my knowledge, and increasingly using it, since about the 1980s. And it's a way of describing the nature of policing. And I would also say that it's a helpful term in and in fact, an indispensable term, in talking about policing. Because it's impossible to understand trends in policing, without being able to refer to militarisation. Some police forces become more militarised over time. Other police forces come to be said to be less militarised over time. And using that kind of description, and – and being able to tie certain consequences to those trends, is

really important. It's really important also, in order to talk about not only comparisons over time, but comparisons between police forces. And within police forces. Because, militarisation, there's a spectrum of militarisation. Some police forces can be said to be highly militarised. And others can be said to be less militarised. And that spectrum of militarisation also helps us understand it's opposite. Which I would say is community policing. So it – to understand the range and difference in policing styles and outcomes, without using that term militarisation.

I'd just like you to expand on what you just said a moment ago about how community policing is the opposite of militarisation. Could you just explain a little bit more about what you mean by that?---Yes. And that's an important issue. So there are key differences between the police and the military. And one of those differences is the – is the way that the police and the military each relate to those people that they act for, or against. So military – the military is typically not connected to any community in particular. In Australia at least, it's usually used in external conflicts in war. And the people that it – that it is – the people that it operates against, are considered enemies. Whereas policing has a different relationship to the community. It's about serving the community, and protecting the community. So there's this ideal of – idea of peer-like (?) policing with I think's been referred to in the courts. And this is the idea that police police by consent. And – and that they use only minimum levels of force. So community policing tends towards partnerships with community, to avoiding force wherever possible. People might be seen as criminals. They might need to be arrested. Police might need to use force, even lethal force at some times, but (inaudible) pre-emptively is enemies to be destroyed, or overcome by overwhelming force. So it is said, and has been said for some time, and the Royal Commission into Aboriginal Deaths in Custody also talked about what police militarism, that it's the antithesis, it's the off-standard of the spectrum from community policing.

So given those differences, could you explain to the court a little bit more about the risks that are associated with the militarisation of a police force?---The risk is that police develop a warrior mindset, whereby they seek to overcome, or treat as the enemy, those people that they're meant to protect and serve. So this comes back significantly to issues around police use of force. So that military mindset is – is very contrary to the police mission of using only minimum force, and policing by consent. There's a risk to the legitimacy of police if police are seen as using high levels of force in situations where it could be avoidable by quick (inaudible). If they're thought of as resorting to coercive force more quickly, or instantaneously, or in circumstances where it could be avoided, then they're going to be losing the trust of communities, and particularly if particular communities are targeted. I'd also say that are risks to the police themselves. That is, losing legitimacy. Not being able to act as sufficiently, because they don't have the cooperation or trust of the community. But the other thing too is there is research that indicates, not only are communities less safe when the police are militarised, that police themselves are less safe. So it's interesting to point to the United States here. I know it's – it's an outlier in the democratic world in relation to militarisation. But the thing about the United States is because – because there's thousands of police forces and many of them are highly militarised to an extent, there can be a comparison between police forces. And

they've done a lot of research there. And the research says that where police are most highly militarised, they're more likely to resort to force, and indeed, lethal force, more often. But there's been some recent research that's also shown the police themselves are less safe. So that more likely themselves to be shot or assaulted in the course of their duty. But – but in summary, the – there are interrelated risks related to police use of force. Moving away from – from the – the requirement mandate to use only minimum force. And police relationships with the community, which are likely to be undermined.

Professor, you've spoken a little bit about the experience in the USA, and what can be drawn from that. I want to bring you back to the Australian experience. And I'll ask you specifically about the Northern Territory shortly. But I just want to ask you about the particular impact that police militarisation has had on Aboriginal people in Australia, and whether you can expand on that a little bit?---Yes. Just to start a little bit in the international context, again because there's some empirical work in particularly Canada and the US, that indicate that para-military forces and militarised styles of policing are used more frequently against minority population and non-white identities. There's also concern about that in New Zealand. In New Zealand, as some people might know, recently rejected having routinely armed police on the basis that there has – the Pasifika and Māori people are more likely to experience use of force and in fact, the paramilitary unit, when they have been used over there, have tended to be used against Māori and Pasifika people. So in Australia, it is impossible to say at the moment that, in quantitative terms, that paramilitary or militarised police are used more frequently against Aboriginal communities. But there has been concern about this, longstanding concern since the 1990s, and many cases and inquiries, Coronial inquests, etcetera which have (inaudible) to the use of militarised tactics and paramilitary groups against Aboriginal people. So, first of all, the Royal Commission into Aboriginal deaths in custody, Wootten J referred very critically to the use of the New South Wales swat teams, special weapons and operations teams, against Aboriginal communities and in particular, in relation to the death shooting, fatal shooting, of an Aboriginal man, David Gundy, in 1989. He referred to the dangers of militarised tactics and military units being integrated into policing and the particular effects it had on Aboriginal people. There was also a report in the 1990s by the Human Rights Commission into racist violence or racist violence by police and that talked about the use of the New South Wales tactical response group against the Aboriginal community in Redfern and talked about the impact - the routine use of that route and the impact it had on the community, the way it was not justified in terms of the offences that, or the circumstances in which the police were used and again, the impact it had on Aboriginal communities of bringing people in from these high militarised groups that had no relationships to the community, no understanding of the community. And more recently, Mortimer J, in a 2016 Federal Court case related to race discrimination brought by the applicants on the basis that the policing post a shooting, a fatality that happened in police custody, an Aboriginal man died, was killed in police custody and the aftermath of that where paramilitary were brought onto the island and the people of that community were the applicants claiming that the use of those types of tactics by the armed forces was racist and that they wouldn't have been used in other communities in those same circumstances. And Mortimer J, in that decision and looking at all the

circumstances, found that indeed she felt it was a breach of the *Racial Discrimination Act*. So, there are all these cases that have been much concern that you can find in the literature around policing of Aboriginal community, about the militarisation of police and it's particular impacts on Aboriginal, Torres Strait Island communities, particularly when you think about or your acknowledge and take into account the history of colonial policing and the use of militarised forces to scoop away for a separate (inaudible) in Australia generally, but in the Northern Territory in particular.

I'd like to take you, Professor, to the particular experience in the Northern Territory, in your view, has there been a militarisation of the Northern Territory Police Force? ---In my view, there are indications of the police force in the Northern Territory – so as the court has heard in the late 1970s, paramilitary groups set up within State and Territory police forces on the basis if they were needed for counterterrorism, in particular, and high-risk situations more generally. So, these were – there are called police tactical groups. They still exist and they have been operating since the late 1970s. The police tactical group in the Northern Territory is called the Territory Response Group and these groups have the potential to be a vector or the harbinger of militarisation amongst police. And I would say that there's an indication of that having happened in the Northern Territory, that risk being realised. I would say that the indications of that are, 1) that the police – that the Territory Response Group has not been strictly contained or used in relation to counterterrorist activity, on counterterrorist activities or responding indeed to high risk situations, but has been more integrated into everyday policing. I understand that the group sometimes, or not infrequently, supports more general duties policing and activities. And I saw a reference to the Territory Response Group being used without police at things like youth concerts. So that is one way in which the influences and tactics of a group like that can spread out and seep into other areas of policing. The second way or indication of the militarisation of police that I can see in the Northern Territory was the establishment of the Immediate Response Team. The Immediate Response Team is a group that sits, I think, it's like a subgroup, perhaps, of the police tactical group, the Territory Response Group. While not formally a police tactical group, it from my understanding and reading of the documents in relation to it, it is definitely a paramilitary group. It has access to the weapons that are otherwise only available to the police tactical group, that is the Territory Response Group, and not just firearms, but other (inaudible) as well. The training that they do is to use levels - higher levels of force than other general duties police. And in addition to that, the police tactical group is involved in training the – or has been involved in training the Immediate Response Team. As I understand it, it has now been disbanded. And then the third thing is that the Immediate Response Team, it seems to me that there were no – the guidelines about the use of that group were not really clear, or they weren't very tied, certainly they weren't confined to counter-terrorist activities or very high risk activities if I'm understanding correctly. And the other thing is that the Immediate Response Team was not a standalone group that was fulltime. So, there mindset, the training, the ethos in the Immediate Response Team, which I see as paramilitary, would be more easily spread amongst other police because they were often involved in general duties policing. And another – can I just say, a final aspect of that is that it seems like the Northern Territory has a particularly high level of ex-military involved in policing and I know the courts have heard evidence about that, but with about

26 percent of recruits in a ten-year period being ex-military, that also raises the issue about militarisation.

Professor, you've canvassed quite a few issues there and I just want to take you to a couple of them and ask you to just expand in a little bit more detail. But the first thing, you've spoken about the TRG, which is the Tactical Response Group. There's been evidence given in this inquest by senior police officers saying that uniforms, equipment, language and tactics of the TRG are all specific and necessary to modern police work and they reject that it's an indication that the police force has become militarised. They say that it's just a necessary evolution of the police force to meet contemporary threats. What's your response to that?---So as I said, the police tactical groups, which is the generic name for groups like the Territory Response Group, was set up in the late 1970s. I believe that those groups are necessary. And they're fully integrated into Australia's national security framework. So I wouldn't argue against the existence of those groups in cotemporary policing. They're well established and the rationale has been laid out, counterterrorism is extremely high-risk situations like the Lindt Café siege. We can see that they're necessary. The big issue is when they're – they become a vector of militarisation throughout the force. And that can be because they're involved in training of other groups. It can be because their weapons and capabilities, their weapons and equipment become more generally available throughout the police force. It can be – it can come about because they become influential trainers throughout the general police force and they bring their military ethos to that. It can be because they're elite and they're looked up to as role models by other police. So it's not the actual – it's not the existence of those groups which tend to be relatively small, the numbers. It's the seepage of the ethos tactics, operations and weapons into less than high risk situations, certainly outside the counterterrorism area, which is always put forward as a rationalisation for specific groups.

And that seepage, professor, is what you're talking about in your statement when you refer to mission creep, is that right?---Correct. Mission creep is where a police tactic or a police approach or a special police unit is set up for one reason, for example, to deal with counterterrorism, but over time become more integrated into everyday activities of police that would never be thought of as high risk, like for example, a youth concert in the same way that counterterrorism is. And that mission creep, it can be even subtle, take place over time and become (inaudible) so that things aren't seen as being used in extraordinary situations like an emergency situation or counterterrorism, become used in more normal everyday situations. And it is hard to resist. Police forces need to be vigilant against that. Because when you have a highly trained group, there's a lot of resources going into train a group, they're considered elite, they have all these skills and weapons. But there's a tendency to want to use them.

Professor, you've spoken a little bit about appropriate circumstances in which a tactical response group like the TRG may respond to counterterrorism activities and things of that nature. Do you think that's it's ever appropriate for a paramilitary group of that nature to go out to effect arrests of individuals?---It depends on – well typically it's considered reasonable for them to be involved in siege situations. Less so in

arrest situations. It depends on the circumstances. If a person is known to be highly armed and dangerous and a history of using weapons, etcetera, there might be some circumstances where it's appropriate. But it would have to be considered a high risk and not an every sort of – an everyday arrest. Remembering that general duties police have a range of options to use force. They have handcuffs, they have shock weapons, they have chemical weapons like pepper or capsicum spray and they have a Glock 9 mm pistol. So it would be unusual, I think, where an arrest required more than that.

Professor, you spoke a little bit about the IRT incident, the response team and as you acknowledged that team has been disbanded in Alice Springs. I just would like you to comment on this. The Coroner evidence from Commander Proctor that the IRT was not an elite unit and he said that they were a unit of general duties officers who have been provided with the skills enhancement to do a specific task. And for your Honour's benefit, that's in transcript page 3744. And he gave evidence that to do those tasks they used equipment such as AR15s and camouflage gear and things of that nature. In your view, is that an example of mission creep?---Very much so. It's a group that is not formally part of the national security arrangement like a police tactical group is or the Territory Response Group is. But it's receiving or using the weapons that are typically only available to that group and has accessed munitions only available to that group. And it seems that it's been trained to use higher levels of force than general duties police. So I do think it's an example of – it's an example of militarisation, if you like, or an aspect of militarisation being normalised and integrated into more everyday policing.

Professor, you talk about the specific risks associated with a tactical response group being viewed within a police force as the elite unit, something that might be aspirational or police officers who want to progress their career or something that's celebrated within the police force and how that plays out?---Yes. I think this is one of the dangers of – that really has to be thought about carefully and there needs to be vigilance against it appearing or that – and the language used. If the police tactical groups like the Territory Response Group are seen as elite within policing, that suggests that they're at the pinnacle of good policing. It creates the situation where they may well be thought to be role models for other police. And given that that paramilitary highly militarised style of policing is the antithesis of community policing, which in modern police forces and in democracies can be community policing is the aspect of policing that should be valued and emphasised and modelled. If the paramilitary groups, the highly militarised groups are seen as elite, it can really change the ethos of other police who want to aspire. Why wouldn't you want to be elite within the organisation that you work for. So the word elite is very regularly associated with these para-military groups. And I think it's an issue, and it needs to be carefully addressed, because although I spoke about the police and military being – having very different missions, having very different relationships for the use of force, and very different relationships to the community, you can see superficially, there's a lot of cross-over between the police and the military. They both wear uniforms. They're both licenced or required to use force, including lethal force on some occasions. Typically, they've been highly masculinist groups. There's more – there's more diversity in policing now than they used to be. There's – there's para-

military groups are still, to the best of my knowledge, (inaudible). You – you really have to be cautious to be always vigilant about creeping militarisation, and policing – para-military police, militarised police, the police tactical groups, are things seen as the elite, is – is a recipe for the – for the spread of the militarised ethos throughout the force. Which I think is a real (inaudible).

And Professor, as you know, this court is focussed on making recommendations for change for the better. And you've given evidence that you recognise Tactical Response Groups are necessary in some circumstances to meet contemporary threats that face police officers. Do you have any recommendations you can suggest about how to guard against the negative consequences of militarisation of policing?---Yes. I think the first thing is that the – the police tactical groups, like the Territory Response, the Territory Response Group, they – they need to have a very firm set of guidelines about when they're used. And their use should be contained to the rationale of their existence, which is those very high-risk situations, like sieges and counter-terrorism. Their involvement in training of other police should be curtailed. It's not appropriate that para-military police train other police. They should not be working in general duties areas of policing. Their weapons and equipment should be strictly contained to the areas in which to – to the police tactical group area. It's got to be – there's also got to be vigilance I think. The experience has been that once weapons or equipment become available to the police tactical group, over time, they make their way into every day policing. So things like Tasers, (inaudible) contained to these police tactical groups, but now they're in every day policing. It seems like some of the weapons, firearms that have been contained to – been contained mainly to the police tactical groups, are being considered for every day policing. So the recommendation would be that – that it – the normalisation of the weapons and equipment that these groups use be guarded against very carefully.

Professor - - - ?---They - - -

- - - just to take you up on that point. We've heard evidence from Deputy Commissioner Smalpage that the AR-15, for instance, is a very versatile weapon that can play a role in general duties policing. And examples he gave were things like the destruction of animals, and he gave evidence about efficiencies where police officers only need to be trained with respect to one weapon, rather than having, you know, multiple weapons (inaudible). Do you have a view about the use of AR-15s in general duties policing?---I think it is inappropriate in every day policing. And this – should such a thing happen, it would be another example of things that were justified only on the basis that they'd be used in very limited circumstances, exceptional circumstances, high risk circumstances, becoming – becoming used – becoming normalised, and moved into every day policing. My view is the AR-15 is a military grade firearm. And that it is intimidating in appearance. It's not easily concealed on the body, that it would be difficult being a long-arm. And that it would interfere with the relationship between police and the community. It – and I think it would be unnecessary. I can't understand the justification for it very easily. But I think it would be a mistake to bring a military style weapon into every day policing. And I guess, in the context of this inquest, it would have to be said that given the high level of

conflict, the contact between First Nation's people and police, the history of that contact, and the history of deaths in custody, fatal police shootings, it would be particularly intimidating, and undermine the security – sense of security of Indigenous people generally. And Indigenous community.

And that's recognising the history of colonial policing or colonisation – policing through colonisation you referred to earlier?---That's correct. Though we're talking about militarisation in a contemporary context. But there's a history of militarisation in Australia. And particularly on the frontier and in the Northern Territory. The early police in Australia, and particularly in colonies where there weren't convicts, their main role was overcoming Aboriginal resistance to occupation, and indeed moving Aboriginal people off their traditional lands. And this – even though the police were – were formally required to protect and serve everyone, including Indigenous populations, the – the use of casual force, coercion, civilisation, casual killings and massacres, by highly militarised police, the early police were highly militarised. They were armed. They were often on horseback. So the militarisation of police in some ways, particularly in relation to Indigenous people, has been ongoing. Or you could see it as a Back To The Future time warp.

And in that context, is it – can I take it that your opinion is, the use of para-military style policing in Aboriginal communities, would – would harm the trust being built between the police officers in those communities?---I have no doubt about that. Militarised policing undermines trust between police and the community generally. But when those – those types of tactics, those attitudes, the warrior mindset, etcetera, the police tactical groups are used in Indigenous communities, particularly disproportionately, and given the history, there's no doubt at all, that it would undermine trust and legitimacy. That's the whole basis of community policing, in general. The idea that police can only be efficient, they can only be successful, with the consent of the community. The idea that they're legitimate. Once the police lose that legitimacy, and they're not seen as serving or protecting the people, but instead as an occupying force, then they lose that legitimacy. And their ability to do their job.

And - - - ?---According to the principles of minimum force.

Professor, you'd be aware that one point of contention in this inquest is the routine carrying of Glock pistols by police officers. And in your statement, you made some comment regarding jurisdictions where police do not routinely carry pistols, or firearms. Could you expand on that a little bit?---Yeah, there are nearly 20 countries in the world where – that I'm aware of, and that have been referred to in the literature, where police don't routinely carry firearms. Some of them are very culturally different to Australia. But a couple that I think are particularly relevant, is New Zealand. Police aren't regularly armed there. And in the wake of the Christchurch Massacre in 2019, where more than 80 people were killed in a mass shooting, there was a reconsideration of whether the police there should remain unarmed or otherwise. And after an enquiry - - -

Can I just pause you there for one second, Professor? Just when you use the word unarmed, do you mean no weapons whatsoever, or are you just referring to not

having a firearm?---Yes, that's a very good point actually. So thank you for pulling me up on that. So it's absolutely true that there are no police forces in the world where police are unarmed. Because in the jurisdictions, the nearly 20 jurisdictions where police don't carry firearms routinely, they are certainly armed. They typically have batons, they typically have what are called less than lethal weapons, including chemical sprays and electric shock weapons. So police are never unarmed. And another point about that is they may be routinely unarmed and you might want to come back to this, but they certainly have – they might be routinely unarmed with firearms, but they certainly have access to firearms.

And could you just expand on that a little bit more, how they have access to firearms, how readily accessible those firearms may be if they're not carried on their person? ---Yes. I think the two examples that are most relevant to Australia are these countries where people – where police are not routinely armed with firearms, are the UK or England and Wales and also New Zealand. In New Zealand I'm aware – and I know that evidence has been given to the court about how police have access to firearms that are kept in a locked safe in cars. So they have access to firearms should they need them in that way. In the UK I think it's a similar situation. But they also have access, as do the New Zealand police, to armed squads that can be called in as backup at any time.

Senior police officers in this inquest, Professor, have given evidence that having a firearm in a car might be good in theory but in practice if a police officer attends to that premises and a defendant comes out armed and is threatening that police officer then and there in the moment, they may not be able to get back to their car to get that firearm. Do you have a view about that?---Yeah, I do have a view about that. I think we can talk about a whole range of scenarios where police being routinely armed then it would seem like a way of avoiding a particular risk or responding to a particular risk. And equally there can be a whole lot of scenarios set out where the firearm creates a danger to the police, the police firearm creates a danger to the police officer themselves and others. But I think we really need to look to the evidence base. It is a common sense assumption that police routinely carrying arms protects both the police and the community better than not carrying arms. And I know that police in jurisdictions that are armed are very reluctant to not carry those firearms. But if you look to the evidence there is no empirical evidence that the routine carriage of firearms actually makes the community safer or it makes police safer. And there is some suggestion that the routine carriage of firearms is detrimental to police safety because it gives an unwarranted sense of safety and encourages police to take risks. Whereas where police are unarmed clearly have to become very skilled in tactics that don't rely on firearms. For example, you know, verbal, contain and negotiate. And a police officer who doesn't have a gun, doesn't have a firearm, is more likely to work harder to find – to avoid confrontation. So I refer to research, there's been research done recently that indicates - that looks at four jurisdictions, two which are routinely (inaudible) firearms and two which the police force are routinely armed and reach the conclusion looking at those four jurisdictions, the routinely armed ones were Canada and Australia and the routinely unarmed ones were New Zealand and England and Wales and reached the conclusion that there was no evidence to support the idea that police and the

community were safer where the police were routinely armed. And back to the US example about police militarisation, where routinely armed police is one indication of police militarisation, it found that the more militarised a police force were, the more likely there was to be fatal shootings by police or resort to firearms by police and the more likely police would be shot or injured.

Professor, just a moment ago you referred to police when they're not carrying a firearm needing to work harder to avoid confrontation. Are you able to just expand a little bit on that. You mean in the way they (inedible) or preparedness they have in setting up a cordon and contain strategy or what's your view around that?---Yeah. So in Victoria, for example, in the 1990s there was great controversy about the number of fatal shootings that police were engaged in, that the police were perpetrating. It was out of proportion to other states and the like. And the police tactical group in that state was responsible for some of those shootings. But an investigation of those shootings by the Coroner, a series of 11 fatal shootings by the Coroner, found that police in Victoria were willing to take risks not – with their own lives and the lives of others by engaging in confrontational tactics. So they weren't trying to avoid situations that would lead to a risk but they were actually engaging in confrontational tactic would – that would lead to a risk arising where they'd have an instantaneous situation where they would have to use or feel that their lives were in risk and have to use the firearm. So those uses of the firearm were basically seen as legal but avoidable. And therefore because they were avoidable they were seen as not consistent with the idea that police use only minimum force. So what I'm trying to say there is that there can be an ethos, a confrontational ethos that can arise when police rely on firearms too heavily, resort to them too quickly and that confrontational ethos can lead to risks for the community who are being – or the target of the confrontation, but also police themselves.

Professor, I just want to circle back quickly on something that you mentioned in passing and I think I interrupted you which (inaudible) the point that you were making at that time. But you mentioned the example of New Zealand going (inaudible) for a reconsideration of police carrying firearms following the Christchurch massacre. And did I understand you to say that following that review police in New Zealand have continued to not carry firearms?---That's - they've continued to not routinely carry firearms and rely on access to firearms in their vehicles in a locked safe. And yes, they rejected the notion that the community would feel safer if police had firearms, even in the context of the aftermath of the Christchurch massacre. There was a feeling that community policing had to be adhered to and in particular Māori and Pasifika people would feel less secure should the police be routinely armed.

And on a similar note to what you were just talking about before, the example of Victorian police doing a review of the confrontation strategy adopted by police forces there, do I understand that strategies have been adopted in Victoria to avoid or reduce complication as much as possible?---Yes. After the review of the – after the series of coronial inquests and based on what was the research done and what was found to be, you know, the confrontational kind of mindset that had arisen in Victoria, partly because, in my research, I found that that was partly or largely a result of the special operations, the police tactical group involved in police firearms training at the

time. Yes, there was a retraining of all the police to move away from those confrontational tactics and emphasise or re-emphasise the need to avoid conflict wherever possible; “surround, contain, negotiate” became the mantra of police. I’m not saying that that would work in 100 percent of cases, it certainly won’t. But in the general course of duties that was to be the default position, rather than confrontation.

Professor, one of the issues around routinely carrying firearms that’s popped up in this coronial inquest is the particular challenges of the Northern Territory where there are particularly remote locations and getting back up units in will take some time with these operational difficulties. Does that change your opinion at all?---No, it doesn’t change my opinion and although I can understand that there are particular challenges in the Northern Territory, I would imagine and I’m happy to be corrected on this, that even though police, on occasions, are in relatively remote locations, I would say that they were – would always have access to a – ready access to a vehicle. I can’t imagine that they’re in remote locations without access to vehicles. And I think the Northern Territory’s quite unique in another way, which is the high percentage of Indigenous people in the population, and that history of colonial conflict, the ongoing history of conflict, if you like, with police, difficulties and tensions in relationships, the feeling like the militarised approaches to policing have overused, disproportionately used in an everyday sense, and also in a more kind of formal sense of the actual paramilitary groups against Indigenous people. There is certainly one section of the community that would be calling for desiring less militarised approaches to policing, and one of those would be for police not to carry guns routinely, especially in communities that are remote.

Thank you, Professor. Professor, those are all of my questions. Is there any other point that you wanted to raise for her Honour coming out of your research?---Only that policing needs to evolve over time and move with the circumstances of the times. And sometimes that can be thought to be involve embracing different technologies and particularly technologies in relation to coercion. You know, evermore powerful firearms, evermore less than lethal weapons or weapons that can be used to coerce. But I think the real challenge and the real evolution for policing in Australia generally, perhaps in the Northern Territory in particular, is to really embrace the idea of partnership or community policing, to engage a group that’s typically been over-policed and underserved, has a history of colonial violence, in the policing project. And that to me would be the evolution that needed to happen and consistent with the idea of policing by consent with minimum force that all police, including the Northern Territory, purport to uphold in the strongest way. But in practise, I think moving towards those more militarised material aspects of policing like, for example, the AR-15s seem to me to move in the opposite direction.

Thank you, Professor.

Your Honour, those are my questions.

Professor, I understand that some of the other parties will now ask you some questions?---Thank you.

THE CORONER: And just before they do, I just have one question. How do you recommend transitioning police through or out of the TRG or similar back into more routine policing, because we have heard some evidence that police may be in the TRG for a period, but then re-enter general policing?---Yeah, your Honour, I think that that's a very good question and I think that that retraining, if you like, or reorienting away from the militarised approach to policing, which is part of being in one of those police tactical groups, is really important. And how it's achieved, I'm not sure. I'm not sure internationally what's done in that context, but I think it's important. And also perhaps it's not exactly answering your question, but there have been police forces that have been highly militarised that have been demilitarised through a process of reform. And an example of that would be the policing in Northern Ireland which, during the conflict there during the 60s/70s/90s and going into the 90s, was the Royal Ulster Constabulary who were a highly militarised force and was not thought of – didn't have the legitimacy or the support of, particularly the Catholic community and as part of the peace process there, there was a demilitarisation, if you like, a written orientation of the police to a more service model, changed in the name to the Police Services Northern Ireland, and that made a real difference. So, the trend towards militarisation is not one that's just one way. It can go the other way too, a re-embracing, recommitment to the establishment as a community policing model.

MR O'BRIEN: Professor, can I pick up just one point, which I think is closely linked to her Honour's question, but it's, how - in your evidence, you spoke about the high number of ex-ADF officers serving in the police force (inaudible). Now, perhaps an inevitability and there's no reason to discriminate against employees just because they have a former military background, do you have a view on how they can be safely transitioned into the police force?---Yeah, I think it's important to emphasise in recruitment, training that the difference between the ethos of the police and the military and how that difference is significant and it's fundamental, despite the superficial kind of commonalities, that there's a difference ethos in relation to use of force and a difference ethos in relation to how one interacts with the community. The mission is completely different. So, I really think that needs to be emphasised. But I also think, given – especially given the high numbers of police recruits who are in the military, and some of the evidence particularly from the United States, which indicates that ex-military personnel, whether they've been deployed in conflict – in warzones or not, are more likely to use force and have complaints about force against them. But there needs to be a system, and I think it's good practice anyway, of using use of force data to monitor patterns of use of force and I think that that should be a serious project and there should be independent research that's done to look at if there is a difference between the use of force by ex-military personnel, those with different sorts of backgrounds, what might explain that, and in particular, what might be done to support those police officers to embrace a more appropriate approach to policing, to mitigate against them engaging in that type of conduct. I also think the complaints data should be used as a management tool. So at the moment, as I understand it, and it's typical around Australia, the – a complaint against a police officer in relation to excessive use of force, will be looked at one on one. But police management don't look for a pattern. And I think that that's complaints data should be analysed for patterns in relation to use of force. To see if

particular officers, or particular – or officers with particular backgrounds, have – have more of an issue, or appear to have more of an issue with use of force. And again, I'll just draw an example from contemporary Northern Ireland. The police ombudsman in Northern Ireland takes complaints against police. And they don't just look at individual complaints. They look for patterns of complaints, and will raise it with police management if they can see particular officers, or (inaudible) officers, there's a pattern of use of force there, that could indicate an issue. It might not. There might be particular areas, like an – there might be particular areas of policing where use of force is part – is more likely to be part of (inaudible). But still though, that data – that complaints data should be looked at and used in an intelligent way, for feedback, and to look for strategies to mitigate.

THE CORONER: Yes, other questions.

Mr Mullins.

XXN BY MR MULLINS:

MR MULLINS: Thank you, your Honour, just briefly.

Professor McCulloch, my name is Mullins. I appear on behalf of the Brown family?---Thank you.

I'm just interested in your comments in relation to the – the fact that the reliance upon firearms can sometimes lead to a failure by police officers in particular circumstances, to rely upon other options that may be available to them in order to de-escalate a dispute. And – do you remember making that comment, or words to that effect?---I do.

Now just in these circumstances, are you familiar with the circumstances of this event?---Broadly, yes.

Briefly, the police officer, Constable Rolfe, who ultimately engaged in the shooting of Kumanjayi Walker, previously – well before he went to House 511, where the confrontation had occurred, had been to another house, 577, in search of Kumanjayi Walker. Do you understand that?---I understand what you've told me, yes.

During the course of that, it may have – it became apparent that he I think unlatched the latch on his revolver – on his firearm, and placed his hand on his firearm as he was going around that house, all right? Just accept that for the moment?---I do accept what you're saying, yes.

Which might suggest to you, is alert to the fact that he might need to use his firearm. Now some minutes later, he approached House 511, with a fellow officer. And in the report of a Mr Ben McDevitt, who's an expert who's going to follow you as a witness. He made this observation. "It appears that Constables Rolfe and Eberl made a decision to enter House 511, with an intent to take Mr Walker into custody, as per the advice they appear to have been given prior to leaving Alice Springs." So just

accept that for the moment. That they intended to go into the house, and to take Mr Walker into custody. Mr McDevitt then says, "The approach adopted by Constables Rolfe and Eberl was one I'm very familiar with, in police tactical training environment." And I think he suggests that these were errors they might have engaged in. Number one, they got too close. Number two, they were focussed it appears on initially establishing his identity, rather than on their own safety. Three, they didn't enter with a clear plan of action. Four, they fail to instruct the other police that they were in there with an unknown male. Five, there was limited effective communication. And six, to some extent, they allowed Mr Walker to dictate what happened next. Is that an example, assuming that that evidence is accepted, of the type of circumstances where an officer is relying too heavily on their firearm to protect them against what might unfold during the course of an arrest?---I think the -- the use of force in this situation has been deemed legal by the courts, but it still arises whether the confrontation could have been avoided. And that's the thrust of your question. And -- and it very much reminds me of the situation in Victoria, and the culture that was said -- the inappropriate culture of the gun, I think the phrase the Coroner used in Victoria was that Victoria police were engaging with the culture of the gun. And one of the things that the Coroner said there was the policy the Victoria Police Force, and it's special operations group, which is a police tactical group, accepts the use of force, forced entry, consequential firearms confrontation, consequential instinctive use of firearms, with legal justification, consequential personal risks to police members, exposed to a person, says "With a gun", which I know isn't the situation -- this situation, and consequently and ultimately condone shootings by police members with legal justification. I feel that's relevant to the circumstances that you've set up. If -- if police believe that a situation is dangerous, it would seem prudent to try and, to the extent that that's possible, avoid a confrontation.

Thank you, Professor.

Thank you, your Honour.

THE CORONER: Yes.

XXN BY MR DERRIG:

MR DERRIG: Good morning, my names Mr Derrig, I appear - - - ?---Hello.

- - - for the North Australian Aboriginal Justice Agency, which is essential Aboriginal Legal Aid in the Northern Territory. I'm going to ask you a couple of questions, and in part I'm going to refer to some evidence that comes up since the start of this inquest. Most of it is conduct with respect to one particular officer. I appreciate that you wouldn't have had an opportunity to follow the evidence. And you really only have to respond to the parts of the evidence I take you to. Do you understand? ---I do understand, thank you.

At page one and two of your report, I note a number of dimensions that indicate police militarisation. And you've already spoken about that in so far, so things like

routine knowledge of guns, military type – military style training, (inaudible). Those are (inaudible) of police militarisation?---Mm mm.

My question is, is it possible to apply these dimensions against the actions of an individual officer, to get an indication, of whether that officer's mindset or actions, are reflective of militarisation?---So are you saying that if a police officer routinely carries a gun, he's been involved with training that's of a para-military – military style training, he's used – sorry, there's just quite a bit of noise. So I think it's - - -

(Inaudible)?---Can you ask the question again, sorry.

I might just tell you where I'm going?---Yeah.

I'm about to provide you with the bits of evidence about actions and conduct of a particular officer. And so there's going to be some communiques that I refer to? ---Mm mm.

And what I'm going to ask you is if that particular action they're engaging in, that officer's engaging in, is indicative of a militarised mindset?---Okay.

Okay. So, I'm about to read to you some of these communicates?---Mm mm.

It's from an officer who was previously in the military. And I'm going to ask you whether or not these are possible indications of a warrior mindset where a use of force is central to the focus. Now I have aid, if you wouldn't mind bringing it up, so you can see the communique that I am about to speak to you to. Now (inaudible) communication one, and before I read it out, I'm just letting you know that Borrooloola which is referred to there, is a remote Aboriginal community in the north east of the Northern Territory?---Mm mm.

And so that that communicates says is "I'm out at Borrooloola, a random community in the coast, because they're rioting. But we came up last time they did this and smashed the whole community. So this time, soon as we arrived, they started they started hating." Now is this a possible indication of a warrior mindset where a use of force is the central focus?---What you see in communication one, is an indication of the use of overwhelming force, and not – not just force against one individual who may have broken the law, but a whole community. So to me it seems to suggest that the community are being constructed as enemies. And a punitive approach or coercive approach is being used. Force is being used to extract compliance. And I do think that – it's certainly not indicative of a mindset that you'd want in a police officer who's – who is at all times, trying to avoid using force wherever possible. And treating the community as people who need to be protected. It seems to be a particular community is being constructed as a whole, as a threat. And that one that needs to be overcome and – but also there's a sense of the community being subjugated - punished and subjugated. So I would say that it's a reasonable indication of that warrior mindset, or the militarised kind of mindset there, where some people are considered to be a threat, based on their characteristics. Perhaps where they live, their cultural background, etcetera.

Thank you. Might go to communication number two now. And it says:

“Dude, I’ve (inaudible) the other night. I was chasing this 40-year-old white ice dealer three days, because he took a machete to some woman. Then saw him driving around town. It was like Bad Boys. We were driving the wrong side of the road, through red lights, 130 k an hour, ha-ha, was sick. Then he tried to run, and we bashed him.”

Is this a possible (inaudible) warrior mindset?---There’s certainly – there’s certainly indications of the masculines mindset, I believe. Engaging in the action – oriented aspects of policing, and revelling in violence, which doesn’t seem to be violence or force – doesn’t seem to be force that’s used to arrest someone, take them before a court. There’s no indication of minimum force. Only force being used in a punitive way. I think – so there’s a kind of – seems like there’s a cowboy aspect to this that might – that might be there as well. But it’s not the mindset of a police officer dedicated to using minimum force.

Thank you. I’ll go the third communique.

“We had this small team in Alice, IRT, Immediate Response Team. We’re not full time, we just get called up from duties – general duties, for high risk jobs. It’s a sweet gig. Just get to do cowboy stuff with no rules.”

Is that indicative of a warrior mindset (inaudible)?---I think again, there’s – yeah, there’s a sense of impunity – impunity and no accountability. And not only no accountability to the community, but no accountability to other police either. It’s again not – not the mindset of a disciplined police officer, or even a disciplined member of a para-military team. But there’s more a cowboy kind of aspect to that.

Would you say it’s contrary to community policing, mindset contrary to community policing?---Absolutely.

And then by your definition, that would suggest that maybe it doesn’t flow, but by your definition, that suggests militarisation, is that correct?---Well it suggests a recklessness, which it – and a revelling in the risk of the job, which you’d hope that – you’d want your police officers not to be revelling in the risk of the job, but trying to avoid the risks. Not only for themselves, but for others. So it’s not an appropriate mindset for a police officer who should be accountable to the organisation and – and – and the community.

Okay, thank you. I’ll take you now to communication number four. And I was wondering if this next extract is indicative of a police officer who is preoccupied with integrating military style equipment and weapons into (inaudible) policing. So it says,

“Hey mate, you’re probably hell busy. I’m a cop in Australia, where I work and get to carry a Glock 22. I was looking at putting a vortex red dot sight on it, and ob-light PL2, Valkyrie. Not fused on (inaudible)” – that (inaudible) sorry.

“That just looks pretty good and not too pricey. Can’t find a holster over here that’ll sort that, are you aware of any (inaudible).”

Does that give an indication of I suppose a pre-occupation with integrating that military style equipment?---It certainly – you wouldn’t expect a police officer who was interested in community policing, minimum force, and policing with consent, to be looking to accessorise in this way.

Okay, thank you. Now this same officer, if this officer was previously in the military was actively trying to recruit another former soldier into the police force, would this be indicative of (inaudible) militarised mindset (inaudible)?---So you’re saying – so is the situation you’re saying that there’s - - -

Maybe I’ll – just to put it this way. You can assume from me for a moment, that this same officer actively tried to recruit a former – another former soldier into the police force. Is that indicative of a military mindset or – or a military (inaudible)?---Not necessarily, I don’t think, because you know, people have friends, they might – so it – it does indicate a way how you know, once you start getting some military into the police force, that there’s a natural snowballing effect through networking. But I don’t think it indicates a military mindset.

Fair enough. This same officer was also a member of the IRT, who also took – undertook selection training for the TRG, who also applied to the SAS while a serving police officer. And who also stated that while he enjoyed being a police officer, his ultimate desire was to become an SAS member. Does that suggest a mindset of someone who’s militarised?---I would say the person was very keen to be using high levels of force, the – in the way that the military do. There’s – especially a services or a commando squad, as you would probably know, in the military, very tight, masculinist group. So I would say that it certainly indicates someone who’s very keen to be involved in the sharp end of policing, which is the militarised end of policing.

If you wouldn’t mind bringing up (inaudible) one more time.

And I’ll take you to communication number six. Now I’m going to read number six and some more recent comments (inaudible). And I’m going to ask you whether or not – whether or not this passage is demonstrative of an us and them mentality, i.e. the us, the need to protect us, and the mean to seeing them as a threat. So the communicate says:

“I was in the job to protect people, but if you are a violent man, causing others harm, or you try to prevent me doing my job to protect and defend, I make no apologies for doing my job. Legitimate authority should win, otherwise what’s the point of civilised society.”

Does that suggest an us and them kind of mentality?---I’m not sure about that. I think it’s quite ambiguous. It – person saying I’m in the job to protect people. No, I don’t think so. I think it’s quite – it could be a legitimate way of expressing –

expressing your dedication to the job and your willingness to protect people by doing your job. The idea that legitimate authority should win, I mean there might be a question mark about what's considered legitimate in that case. But I wouldn't make too much of that.

Fair enough. Based on all the conduct that I've just taken you through as well as these quotes, would you say in the totality of what you've seen from this one officer, would you suggest that – would it be your opinion that this officer appears to have a militarised mindset?

DR FRECKELTON: I object to that question. What the witness has been taken to is a series of communications with no surrounding context on them to impugn whether this particular officer has militarisation based on simple communications and not any surrounding conduct (inaudible).

THE CORONER: Well I mean I think she's just being asked to provide an opinion in relation to these particular communications and a little bit of other information that's been provided, what weight might be given to that opinion, or whether it is affected by other evidence, I don't think prevents the question being asked and answered.

DR FRECKELTON: I think the use of the word and other conduct (inaudible).

MR BOE: I just (inaudible).

THE CORONER: Yes, just limited to what has been raised in cross-examination or examination.

MR DERRIG: Yes, thank you.

THE CORONER: Yes?---I think it raises – those communications to me would – and – would raise a big red flag about the mindset of the person who was – who had authored them. And in a police force dedicated to use only minimum force and with the idea that policing by consent, I think it would raise a red flag.

MR DERRIG: Thank you. I'll turn to a slightly different topic and it's police force in general. At page 1 of your report you note the militarisation of police across Australia has occurred since the 1970s. if you could assume for me for a moment that up until 1996 guns were not mandatory for Northern Territory Police in remote communities up until that point, comparing that to the situation now that there is very limited discretion not to wear guns (inaudible) accoutrements, would this be an example of militarisation?---I think it is. Again I say – I think it is an example of militarisation. Again I say that militarisation is kind of on a spectrum and that police routinely carrying arms in situations where they previously didn't would move them further along the spectrum towards militarisation.

And is the use of AR15s in remote communities by officers who are there in general duties capacity these days, is that an even further – further evidence of further militarisation?

DR FRECKELTON: I object to that, your Honour. The evidence is that AR15s are not routinely used (inaudible) one officer to his AR15 it's part of the IRT deployment. Three officers took theirs and used them for crime scene (inaudible). But there's no evidence (inaudible).

MR DERRIG: I apologise if I used the word routinely, that may have been an accident. But I'll withdraw the question.

At page 6 of your report you mention the inevitable confrontational approach of police tactical groups and you refer to Mortimer J but you say, "Although critical of police tactics, Justice Mortimer maintained that individual members of police tactical groups deployed were not responsible in that summarised (inaudible) human nature of the way that police tactical groups operate". Now would it be fair to say that the creation of these units institutionalises the militarisation of the police force?---Well I think – I think that the creation of the units back in the late 1970s was a step, the path to militarisation if we see militarisation as a spectrum that exists between, for example, community policing and highly militarised police force by many of those in the United States. I think setting up the groups is a step towards militarisation of policing. But it depends – given that the groups have been in operation for more than or close to 50 years, it depends (inaudible) to which the implements of those groups and their paramilitary tactics, etcetera, seep into the general police force. So yes, them being established moves along the spectrum to militarisation. But the extent to which they militarise the police depends a lot on how they're used, when they're used, what they're used for, their contact with other police, their influence with other police, whether their weapons are – the weapons that they have that are higher and more military ground than general duties police, stay contained within those units or whether they spread out over time to other police.

Now you're aware that in 2019 the Northern Territory Police had both TRG and the IRT, is that correct, you're aware of that?---Yes.

What does the simultaneous existence of both of these groups say about the militarisation of the Northern Territory Police Force at that time?---Well I think the existence of the IRT, the establishment of it, as I said, the – similar to what I said before, it's a step along the road to militarisation and it shows the spread of the influence or the style, paramilitary styles of policing from the PTG to more general policing. So I think it's a step along the track to militarisation. And I think in particular that it's a part-time unit and the members are both general duties police and then sometimes immediate response team police is an indication that the boundaries around the paramilitary styles and weapons are somewhat porous. Can I just say, there's actually quite a lot of noise at my end and I think it's coming from papers up that end of the table? I'm sorry, it just makes it hard for me to – yeah. Sorry. I think so.

Thank you. Now through this inquest we've heard senior officers – or a senior officer - praise that same officer I was referring to earlier for his work practices. Now that officer has been the subject of serious allegations of misconduct that he used

excessive force. What I'm about to do is read to you a quote from the evidence that first talks about the praise of that officer. So it says,

"He has a really high work rate. You know, he – he was always the go to person. If you wanted some – something done, you know, quickly, effectively and efficiently, then he was the – often the one that you would sort of see and say, hey, you really need to try and locate this person and you knew – you knew he was really good, he had a really good work ethic".

Counsel assisting in this inquest then raised some of those concerns around this alleged misconduct issues and then asked the question, "Do you think in looking back on it, that because he placed such great weight on his abilities, his tactical abilities, his high work rate, you didn't sufficiently prioritise those red flags". That officer then provided this response, "I think looking back at it with the information that I have now, that I – I could have looked a bit harder, yes". Now reflecting on that exchange, what does that indicate to you about a sense of militarisation?---Well I'd say – I would say that I've often heard it said, for example, that ex-military police are affective police, efficient police and well disciplined. And I think that overlooks the core question – and this relates back to the work ethic, etcetera and the tactical skills – it can obscure the fact that you've got to know what you're working towards and what are you being effective at. And it seems to reflect the whole dynamic of the exchange, talking about work ethic and being effective in the context of all this. The idea that police are primarily action-oriented and crime fighters, rather than people who serve the community which takes up the majority of most polices' time.

Thank you. Just a couple of last questions. I'll just take you to the issue around guns. You've already spoken about how police with guns provide a detrimental illusion to safety resulting in situations where police are more likely to take a risk. Would an example of such a risk be a situation where a police officer might enter into a house with a potentially armed person to effect an arrest, comparing to a situation where they would have cordoned and negotiated for that person to come out. With that entry rather than negotiation, would that be an example of an unnecessary risk? ---I think I have to answer that question in a nuanced way. So, in most situations, cordon or surround, contain and negotiate is seen as the best way forward and consistent with avoiding risk to police, the target and other people. But I'm also aware of the Lindt siege that happened in 2014 in Sydney, and police were criticised there. It was a siege that went on for 17 hours or the like. But in the coronial inquest that followed, they were criticised for not going in. So I think surround, contain and negotiate in the majority of cases is correct. Occasionally, a different tactic needs to be used. But in the Lindt café siege, where police were criticised for not going in, they did wait 17 hours. It wasn't like the criticism was, they should have gone in straight away. So, typically, you would only go in as a last resort. But when it becomes a last resort, (inaudible) be questionable.

Okay, thank you. I'll ask the last series of questions, and you've already touched on this a little bit about effectively demilitarising the police. I was wondering if there was an officer who might have seen active duty in the Australian Defence Force or wherever else, if there's some specific or more specialised tactics that might be used

to demilitarise that in the police force?---Specialised tactics that might be used to demilitarise them, did you say?

That's right?---Well, there is evidence, again from the United States, that suggests that police officers that have seen active duty have – are ex-military and have seen active duty, are more likely to use force, more likely to use their firearms, et cetera, than ex-military who haven't seen active duty, although those ex-military are also more likely to use force, et cetera, that general duties police. But not as likely as those that have been deployed in active conflict. So, it does seem really important that there be a kind of transition period or a debriefing, or a reorientation that's very conscious, a very well-organised plan. I'm not aware – I think one of the statements that I've read suggests that – that's looking at these things also says they're not aware of where this is happening. There might be some small example of it in Tasmania. I'm not sure about overseas, but I'm not aware of any research or programs that do that. But I really think it's very important, particularly in the context again of the Northern Territory which has a high number of ex-military or ex-military recruits and also, as a community, a high percentage of Indigenous people in the community and with the history of policing, the colonial history that in many ways is ongoing. And there is the danger that, in this context, there mindset is – particularly when one group is perhaps treated as a threat in a pre-emptive way and in a way other members of duty are not. So, I think it needs to be done, but I don't know how it can be done.

Okay. Final questions, you've spoken before about police being – police forces demilitarising, and the successful cases such as in Ireland, do you think there's a need for civilian oversight over that process, or is it sufficient that the police would be able to do it themselves?---I have an absolute conviction that there needs to be police oversight, I mean civilian oversight of that process. And it's clear from Northern Ireland that that civilian oversight of police was absolutely critical in achieving the changes that have been achieved. The changes have been transformative as I said, and civilian oversight, there was the establishment of a police ombudsman in Northern Ireland 100 percent independent from the police. And I think that will be very important. There are, you know - leadership within policing is important, so for example, appointing a chief commissioner that has an explicit commitment to policing by consent, community policing, inclusive policing, will be important to implement. So, there's not – it's not like it – you don't need – it's not like you don't need weigh in from police, you need to get as much of that as you can because it's harder to impose from outside. But the civilian oversight is critical, essential.

Thank you very much.

That's all my questions.

THE CORONER: I think we're over the parties who want to ask questions, so we'll take the morning tea adjournment.

DR DWYER: Thank you, your Honour.

THE CORONER: Thanks, Dr McCullough, we'll come back to you shortly after a short adjournment?---Thank you.

WITNESS WITHDREW

ADJOURNED

RESUMED

THE CORONER: Yes, further questions of Dr McCullough?

DR DWYER: Dr Freckelton.

THE CORONER: Dr Freckelton.

XXN BY DR FRECKELTON

DR FRECKLETON: Thank you, your Honour. Professor McCullough, my name is Freckelton. Can you hear me all right?---I can hear you very well, thank you.

Good?---Dr Freckelton.

Thank you. I appear for the Northern Territory Police Force and various (inaudible), all right?---Okay.

Now, just going to your own background professor, you were a practicing solicitor in the inner suburbs of western Melbourne I think, and then the last couple of decades you've moved to Monash University as an academic, is that right?---Correct.

And your book on paramilitary policing was published in 2001?---Correct.

Have you had reason to devote particular study or attention to policing in the Northern Territory?---No, I have not, except in the context of this Coronial inquest where I've been provided with materials in the extensive brief.

I see. And have you had the opportunity to watch the livestream of the proceedings or have your other duties occupied your attention?---I haven't been able to devote myself to the inquest fulltime but I've read – I've read excerpts of the transcript where they appear to be particularly relevant and I've been directed to them.

So for instance, have you read the standard operating procedures of the IRT and the TRG?---Yes, I would have. I think I reference them in my statement.

And have you read the affidavits of Deputy Commissioner Smalpage?---I have, yes. Whether I've read all of them but I've read quite a lot of it.

In particular have you read the extensive affidavit filed on 10 February of this year? ---I think I've read his affidavit but not necessarily all the attachments.

So you've read that most recent, the third of his affidavits?---I think so, yes.

All right, excellent. Now you identify on the pages 1 and 2 what you describe as dimensions of police militarisation, is that right?---Correct, yes.

And when you define militarisation I think you've said in your evidence today and also in your report, that it involves the integration and adoption of military philosophy and operational approaches into policing?---Correct.

And in essence, although as I understand it you accept that some essence of militarisation is appropriate, it's your position that militarisation of policing should be kept to an absolute minimum?---Yes, given the mandate of police to use only minimum force, police by consent in the way that the military mission and the police mission are – don't particularly opposed or opposite in some ways in relation to use of force.

Yes. Let's - - -?---And in relation to attitudes to community.

Thank you. Because as you have described it, modern policing so far as possible should be policing by consent and policing by negotiation and for use of non-coercive strategies?---As far as possible. Recognising that it's not always possible. But - - -

(Inaudible)?---Yes.

Because there are occasions when people are embarked upon violent courses of conduct, the Bourke Street Mall scenario was an example of that and you've referred to the Lindt Café (inaudible). There wasn't – there were attempts at negotiations with the man responsible for the Lindt Café but ultimately other strategies had to be deployed, is that right?---That's correct.

And you would have no criticism for the deployment of such strategies by suitably trained specialist units from a police force?---That's correct, in exceptional high risk situations like a siege or counterterrorist activity or a mass casualty attack, absolutely.

And as you've described to her Honour, these units which have different names in different parts of the country, started to come into being in the aftermath of the Hilton bombing?---Well actually they were established before the Hilton bombing and announced afterwards, but that's a minor detail.

Yes. But at the heart of the renaming of such units and the professionalisation of them, there were aspects of response to what was identified as a terrorist threat, is that right?---Well the rationale, the reason given for their establishment, which was understood to be controversial at the time because of the constitutional and traditional separation between police and military, the rationale for establishment at the time was a counterterrorist capability.

Yes. And there was perceived to be a risk around that period of the late 1970s and 1980s and in due course another form of professional threat evolved from ISIS and other comparable organisations?---Yes, you'd have to say that the attacks in 2000 on the United States or 2001, were a milestone in the development of counterterrorist activities or frameworks and in many western democracies.

So there's a legitimate role for units that can respond swiftly to what used to be called terrorist threats but are now often designated active armed offender threats?
---There's a legitimate role but it's a narrow role and strictly contained in my view.

And incidents can arise in a variety of locations where the skills of such units are required to enable a fast response in order to protect the community?---Sometimes, yes.

And so that alone justifies the existence of such units so that there is that capacity for response?---Yes. I just want to say though that there can be a slippage between those extraordinary exceptional acts and how they're – the rationale to establish those units and much more everyday kind of events where sometimes they end up being used.

And this is the mission creep to which you have referred in your statement?---Yes.

All right. Now the Australian policing environment, I think you've said already, is significantly at variance to that in the United States?---Yes. Although it's true that the United States is an exemplar of militarisation and we don't see that degree of militarisation in Australia. Originally the military – originally the military capacities and the paramilitary police were based on the British SAS. But over time the example from the United States has been more influential in the development of policing in Australia, it's militarised capacities.

But culturally there is a propound difference between the two countries, amongst other things because of the widespread presence of firearms within the community?
---Without any doubt.

And that has resulted in the United States and many of the troubling phenomena that you have described of shootings of civilians by police and shootings by police of civilians?---Partly. Partly the availability, widespread availability of guns amongst the civilian population accounts for the use of force and particularly lethal force in the United States. But there is also the other dimension of that, which is the disproportionate use of force against people of colour and many of them are not armed.

Yes. There's a fear on both sides, if you like, that's spiralled by reason of the usage of firearms both by members of the community and by members of the police forces?---Except I do think it's – in relation to racialised minorities, it's – the fear is different. I think the fear of being shot by police against by some racialised minorities is well founded given the disproportionate use of firearms and excessive use of force against racialised minorities in the United States, which has little to do with them being armed. Little to do with the racialised minorities have a firearm.

But you would agree that the ambiguity of firearms in the United States, is a phenomenon that distinguishes us from the United States in a major way?---Yes.

And likewise, there are significant considerations in different parts of Australia, which render one part of the country, really quite significantly different from another, in terms of what is required of policing?---That may be so.

Now, are you familiar with the *Police Administration Act* in the Northern Territory?
---Not – not word for word and line for line. Are you going to point me to the issues around police use of firearms or - - -

No - - - ?---Police carriage of firearms.

No, just in general terms, the functions of the – the police force here. They're not profoundly different from those elsewhere. But I'll read them to you?---Yeah.

First of all,

In s 5(2), your Honour.

“To uphold the law and maintain social order”?---Mm mm.

That's a common role for police around Australia, is it not?---I believe so.

“To protect life and property”, similarly?---Yes.

“To prevent, detect, investigate and prosecute offences”, similar - - - ?---Yes.

“To manage a range of safety matters, and to manage the provision of services in emergencies”?---Mm mm.

Those are all chore and community expected roles for a police force, are they not?
---They are.

But the Northern Territory is distinctive in a number of regards, I suggest. Including that it's a very large area of – of community, in which people are widely geographically separated?---Mm mm.

Are you aware of what Themis police stations are?---Sorry?

Are you aware of what Themis police stations are?---No I'm not.

Okay, they're – they're police stations that spend much of their time closed, but can be staffed by police members as deemed necessary, with police members coming from other communities, not too far away, in order to provide that service to the community?---Mm mm.

So will you accept from me that there are a significant number of such police stations in the Northern Territory?---I will.

And also there are many police stations which are staffed by either two or three officers?---Mm mm.

Providing services to communities that might be as few as four or 500 people, a long way from some of the major areas of population. Do you accept that that's - - - ?---
Yep.

- - - an attribute of Northern Territory policing?---I accept it from you.

Okay. Now are you familiar with where the IRT was designated as needing to provide its services, before it was abolished?---I believe it was Alice Springs.

Okay, well if I tell you it was the full - - - ?---And surrounds.

- - - yes, the full southern region - - - ?---Mm mm.

- - - extended for literally thousands of kilometres. Would you accept that?---Yes.

And that it was brought into existence to cordon and – originally, under another name, to cordon and contain until the Territory Response Group could arrive from Darwin by aeroplane?---Yep.

Do you accept too, that while the special operations group in Melbourne, may be able to deal with many – many issues in Victoria, the tyranny of distance require other policing responses in an area as vast as the Northern Territory?---I do, but whether that response needs to be the establishment of a para-military unit that's separate from the police tactical group, but also part-time, and – part-time, and engaged in general duties policing as well, I'm not – I'm not sure that it necessitates that.

Right. Would you - - - ?---Is necessitated by the distance.

Yes. The thinking for a significant period of time when was – that because it would take many hours to get police from Darwin, where there was an emergency, by reason of rioting, or – or some other form of crisis, that the Immediate Response Team had a role to play in – in effect, holding the fort and providing skilled services until the TRG could arrive and take over. Can you see the rationale for that?---I can see the rationale for it, but given that the – the IRT has now been disbanded, I'd imagine the rationale's also been re-thought.

You're absolutely right, Professor, it has. And that's involved additional resources for the TRG. Expedition of despatch of planes with several personnel, and extra responsibilities for general operations police. Does that make sense to you?---Does make sense to me.

But the essence of the – the role for the IRT, as now is for general operations police, where there is this kind of crisis, was to cordon and contain, and endeavour to secure law and order and maintain a satisfactory status quo until TRG could arrive

and take charge and do what they needed to do. Do you accept that that is a reasonable response?---When they were first set up - - -

Yes?---You mean?

Yes?---I have difficulty accepting that it was reasonable to set up a group that would have the accoutrements, the equipment of a para-military group, train with the Territory Response Group, but also be involved in general duties policing. I think that that – which the thinking might be in hindsight that was a poor decision, I'm saying that was a poor decision really. And one that was likely to spread a kind of policing that's antithetical to community policing and use of minimum force.

Well let's just go behind some of what you've said there. The evidence before her Honour is that there was not collegiate training between the IRT and the TRG, but that TRG personnel assisted on occasions, in training the IRT. Do you accept that?---If that's the evidence, yes.

THE CORONER: Who else was doing the training?

DR FRECKLETON: The senior personnel within the IRT.

THE CORONER: Sergeant Bauwens.

DR FRECKLETON: Bauwens.

THE CORONER: Who was ex - - -

DR FRECKLETON: Ex-TRG, that's absolutely right.

THE CORONER: TRG, yes.

DR FRECKLETON: Yes, yes?---So it's - - -

THE CORONER: With TRG training?---Yeah.

Which he bought to the role?---But - - -

DR FRECKLETON: He bought skills from his background in the TRG to be sure.

Now - - - ?---Would you like me to comment on that?

If you wish, Professor?---I think that's exactly the sort of problem that arose in Victoria, where ex – where ex-PTG were bought in to train general duties police. In these case, they're bought in to change – to train the IRT, but they bring their – their military – they're having a lot of influence over the training. They're not necessarily – they're not training together as I understand it - - -

No?---But they are influential in the training. Which is – is part of the way that militarisation spreads through organisations, when these elite, specially trained, para-military police, are engaged in, or influential in the training of other police.

THE CORONER: So you definitely don't want ex-TRG going to the training college?---Me?

Yes?---In general I would say no. Perhaps TRG could go and talk about the difference between their role and the general duties police. But to teach skills, I think you have to be very cautious there. In Victoria, the special operations group, trained Victoria Police in forced entry raids, at the training college, which had been a tactic that had been confined to – to the special operations group, until they taught it to all the general duties police. And then what happened is those forced entry raids led to a number of fatal shootings or there seemed to be civil actions against the police and what many people, you know, considered an unnecessary use of force. So I guess there might be circumstances where they could (inaudible), but you would have to be very careful what their purpose is there and what their training, what they're instilling.

Insofar as they are imparting skills, technical skills, in the use of the weapons to which they are allowed access, presumably you would want specialist training to enable those skills to be acquired?---Well, I still don't understand why a group that wasn't the – I really don't understand why a group that wasn't a police tactical group, a formal police tactical group, were training with IRTs - AR-15s, sorry there's too many acronyms and numbers.

Yes?---But - - -

There are these secondary groups in a number of places, including in Victoria with the Critical Incident Response Team, to enable immediate response, pending the arrival of the – as you described it, “the elite group”, which in the Northern Territory is the TRG. Do you agree with that?---Yes.

THE CORONER: I think, though, Professor McCullough was – would prefer those groups not to be considered as “elite”, rather as “specialised”.

DR FRECKELTON: I take your point, your Honour, and I'm comfortable with it. Let's describe it from now on as “specialised” rather than creating an expectation that they are a pinnacle for where police officers should want to – to which officers should aspire.

Is that part of your point, Professor?---Yes.

Okay?---Thank you, your Honour.

Yes. Now, with these secondary groups, would you accept that they have a legitimate role, so long as it is well-described and is circumscribed?---Yes, if – and they shouldn't be part-time and going back to general duties, and their proliferation should be strictly controlled.

What if there's not enough work for them to be fulltime in a sparsely populated place such as the Northern Territory?---Yeah, I accept that that's a dilemma, but I think it's an investment that's worth making. And that's what happens with these – it is what tends to happen with these specially trained groups, is they're specially trained to deal with specialist – extraordinary situations involving complex and high levels of risk to which it might be appropriate to respond using high levels of force, but those exceptional situations arrive only exceptionally, and then people are sitting around or these groups' skills that are very specialist, that have required a lot of investment, that naturally enough, those that have these skills would like the opportunity to use, have nothing to do. And that's how this seepage occurs sometimes, or this mission creep, because people say, oh well, we've got this specialist capability. They can do counterterrorism and do all these things, but they never get a chance to practise, because there isn't enough of it, but I think of that as less of a problem than militarising the police force. So there has to be another way - - -

Okay?--- - - - to deal with that issue of resources that may seem to be being wasted.

Well, one of the other ways which might exist is for such entities to have more than one role. They might be deployed to high-risk scenarios on occasion and have other responsibilities which are more benign, but which are required in different forms of emergency. Would you reject that as a reasonable way for such groups to be kept occupied?---Possibly, yes. As long as the ways they use those other more benign aren't - do not slide into - - -

Yes?--- - - - or the boundaries of them don't step into a coercive role and don't require those members to use force or to carry their weapons around, for example.

Yes?---Or go with weapons. So it may be - - -

So in short, there needs to be clarity of role for one of the – for any formal specialist unit, however they are deployed. Can we agree on that?---The specialist units that are trained to use high levels of force that would typically be exceptional, yes.

Yes. But as you point out, there are only so many law and order emergencies requiring emergency response in any place, especially including the Northern Territory?---Yes. And that's, as I said, a bit of a dilemma and a bit of a challenge, because there's where mission creep creeps in. People are looking for ways to use this specialist skills so they're not wasted, but then they can become – the use of these tactics can become normalised. But if I understand it, Dr Freckelton, you're talking about an ancillary role that doesn't involve coercion, but might involve working in a bushfire/flood situation.

That's right, yes?---So that sounds more sensible to me and a possibility, if there's clarity involved.

All right. So, clarity is the key in that regard, you're saying?

THE CORONER: It's more than that, it's clarity of the role and also, if you're proposing to use them in a second role, it can't be a coercive role, because that's where mission creep comes in.

DR FRECKELTON: Do you agree with that, Professor?---I do.

All right. From your reading of the Standard Operating Procedures of the Immediate Response Team in the Northern Territory, did you identify that there were two kinds of deployments which could be utilised for the team, high-risk deployments and also general support operations?---Now that you've reminded me, yes. I don't have them in front of me.

And those general support operations could include, in effect, providing additional personnel to enable response, where members of the team – or when there was a special need for additional personnel?---I think that gets into the area, doesn't it, that they're just going back into general duties policing.

That might be, but rather than having them sitting, waiting for a absolute emergency from an active armed offender or someone else, would you concede that that is a useful resource for policing that may be stretched by reason of the demands and also the tyrannies of distance?---I do understand the reasoning. I do understand the reasoning, but I think the risk are too great in terms of that mission creep, the fact that the members of that group have been trained to use high levels of force. And once they've been trained to use that high level of force, then it's – there is the danger that they take that ethos into whatever they're doing.

Do you accept that when members of, in the Northern Territory, the TRG or VIRT as it used to be, used force they were subject to all the constraints which by law and police protocols applied to use of force?---Subject in a formal way, in a substantive way, I think that all policing is done on a trust basis. It's an occupation where people, especially people who are working on the frontline say what they do is relatively invisible and there can be – even all the protocols everywhere in democracies are around minimum use of force, avoiding force, the success of an operation is the extent to which force is not used. It's clear that force is often used in other situations. It's not minimum force, it's used punitively, that risks are created by – in policing, that force will have to be used. The risk is created by police sometimes, the tactics that they use. Even if they're responding to a risk, they can heighten the risk by the tactics that they use. So I don't accept that what's on paper is actually what happens on the ground and I don't accept when something happens on the ground that there's necessarily an opportunity or a will to hold police to account for that.

Okay?---For that departure.

Now you've had read to you by Mr Derek some repugnant texts and there are others of which you'll be aware and which are as far as racist, sexist, misogynist, homophobic and disrespectful of values and attitudes, is that right?---Correct.

You know about those?---I do.

And you have read particular messages which you have designated – and there's no argument from us about this – suggest a warrior mentality and a misconception as to the role of policing?---Correct.

And you're aware, no doubt from some of those text messages, that Mr Rolfe, let's name him, was not the only person who had some of these attitudes?---That's correct.

But in terms of there's seepage into militarised behaviour and inappropriate use of force, do you identify a pattern of this in the Northern Territory in recent times?---I'm mainly aware of this incident.

It's always - - -?---It's hard for - - -

I beg your pardon. Please go ahead?---Yes. As you say, there's no way of knowing empirically the type. Whether there's a pattern of use of force in the Northern Territory. I do know the particular police officer who was the author of these texts had a history of complaints made against him around use of force. And in particular, as I understand it, please correct me if I'm wrong, against Aboriginal people. So that suggests to me that there wasn't a red flag on that, that there's no vigilance in making sure that complaints about excessive use of force, particularly if there's a pattern of them, don't indicate a problem with the police officer. But I think it's true that one individual or one swallow doesn't make a summer or whatever the saying is. But I think it also suggests a systematic problem with accountability. And one counsel – excuse me, I've forgotten their name – mentioned that even in the context of police hierarchies, more senior police being aware of the complaints, they still felt the member was a good police officer based on their work ethic and their efficiency. They failed to see the red flag.

There is of course a significant distinction between a complaint and an approved incident of misconduct, is there not?---There is and as I think you might be aware, the rate of substantiation of complaints when a person makes the complaint is extremely low. In Victoria the rate of substantiation of complaints is about two percent. And it's even lower when complaints of excessive force are made. So the fact that a complaint, an allegation is found not to be substantiated by the police process of investigation and review is not indicative, in my view, that there isn't a problem. And if you get a number of complaints that have some similarity, they all relate to use of force and some of them relate to first nations people in particular. You should be looking at that as a management issue, taking that a step back and acting on it.

Action of course can only be taken where the evidence permits a finding that something untoward has been done.

THE CORONER: That's action against an individual. But what I think

Dr McCullough is talking about is a red flag and management action are to ensure that the policies and procedures are being understood, are reinforced and you know, oversight to ensure that they're being followed.

DR FRECKELTON: Are you comfortable with her Honour putting it that way, professor?---I'm grateful. Thank you, your Honour.

THE CORONER: Well it's just what I understand. I could be wrong.

DR FRECKELTON: So what this highlights, I suggest, professor, is that there needs to be systems of oversight and supervision which pick up on what you've called red flags and potential atoms of inappropriate behaviour as an early intervention?---As an intervention, the earlier the better. And it's not just to protect the community or to – it's also important – it's also important for the police organisation to have an indication to avoid what can turn out to be enormous problems down the track. And its also important for the individual officer. So – that their behaviour can be modified where appropriate, checked. Of course sometimes it can't be, but - - -

Some people are responsive to such mentoring or guidance but others are not, is that right?---That's what I think, yes.

And are you aware that, for instance, Mr Rolfe was spoken to by a variety of senior personnel about his conduct in relation to body worn video?---Not in detail.

But in general terms you would expect a duty member of the police force to listen attentively when given guidance by more senior members and to take onboard what is said and modify their conduct accordingly?---Well I think – I think that some things require more than conversation and mentoring. If there's a pattern of use of force, for example and there's a pattern of use of force against particular communities or particular racialised identities, I think supervision, close supervision would be required and more than just collegiate conversations with people who are mentors or (inaudible) mentors.

Yes. But again, if one escalates the response on the part of those with a responsibility for dealing with disciplinary matters, again that has to be conditioned as a matter of basic fairness to what is proved or what can be proved rather than just suspicion or innuendo or concern?---That's right. It would be – to me it would be interesting to know exactly – I mean I know the Police Ombudsman in Northern Ireland looks for those patterns of complaints and informs police hierarchy. I don't know what happens from there, but it would be interesting to know. Because that, to my knowledge, as a police force that uses the complaint system as a feedback mechanism and management tool. So the details of what happened to the police officer, I'm not sure.

Are you aware - - -?---Of what their strategies are.

I beg your pardon. Please finish?---I did.

Are you aware of the initiative that has been trialled in the Northern Territory latterly to have a subject matter expert on use of force reviewing every use of force report, their station in the college and their role is to look for patterns either in localities or kinds of behaviour or conduct engaged in by a particular individual or group of individuals. Are you aware of that?---I'm not. It sounds like a positive development. And I – when you say a content expert, is that a police?

Yes?---Someone in the police organisation.

It's what police call, and to use another acronym, a – an SME, a subject matter expert. Namely somebody who has particular knowledge of issues relating to use of force. And may have been a trainer in that regard. So his job is to look through every use of force report, and identify issues arising. Do you regard that as a positive kind of response?---It does sound like a positive kind of response, but you'd want to monitor it and see how it's going.

Yes. And if that individual had as a responsibility to feedback information into what's called the Professional Services Command, who are the people who do investigations into complaints, and internal investigations, so that they can respond suitably, would you welcome that as an initiative?---I would welcome it. I'm also aware of all the research that shows that internal review, police investigating police, and those things like professional standards commands, etcetera, the lack of independence can really – so the lack of civilian input can mean that there's a lack of impartiality and unbiased, in way that complaints are considered, so.

Okay?---But I do think it's a positive development.

But you also accept I think, that early intervention by persons who are very influential in a police force, such as sergeants and senior sergeants, is an important way to moderate inappropriate behaviours by junior officers?---It is. As long as the senior – the senior people – ethos is not one that – that recollects what we would be talking about here as kind of inappropriate behaviour, because sometimes the senior police – the junior police have learnt the ethos of their – the more senior police. So it depends – depends about the quality of the senior police doing the oversight and mentoring.

That's it, isn't it, because it's necessary for there to be reinforcement to supervisors, particularly sergeants and senior sergeants. Perhaps here where there are non-inspectors, superintendents, that this is a chore responsibility for them. And for them to fail to exercise that responsibility, is a derogation of what are expected to do, and could be the subject of disciplinary action against them?---Yeah, well messages from the top, if we're talking you know, the senior people being directed to do things by the more senior people, if I'm understanding you correctly, are important, you know, in shaping the culture of – of the police force. In terms of complaints and excessive use of force and the like, I think it's critical to have civilian input or overview. And you know, the independence there can be important. But if the desire to look at (inaudible) complaints and the commitment to doing it, I think is a good thing.

So again, that enhancement and affirmation of supervisory responsibilities by influential levels within a police force, is integral to making people accountable for undertaking the interventions necessary to intervene early and effectively?---Yes, as – as long as the senior police are sincere in doing that, and - - -

Yes?---And they're not part of a culture of impunity or condoning excessive use of force, have certain sort of attitudes themselves. I'm just aware that the – in 2016, that the head of the Professional Standards Command, the Assistant Commissioner there, who is – is the head of investigating complaints about police within the police, he was found to have written a series of emails that were highly offensive. Homophobic, racist, etcetera, so you wouldn't - - -

Yes - - - ?---So you've got to the right individuals in the right place.

Yes. I'm not sure whether you're aware of the expressed commitment by the Deputy Commissioner here, speaking on behalf of the Commissioner, to this kind of cultural change, and the – the lack of tolerance that – that they have said that they have for excessive use of force, and for racist behaviour. Are you aware of what's been said in that regard?---Not in detail, but I would congratulate that commitment, messages from the top do matter. As long as they're sincere, and they're followed through. And you know, in deed, as well as word.

Yes. Have you read the Galiat Report into the Professional Standards Command in the Northern Territory?---No.

Do you agree that an emphasis on effective early intervention in respect of conduct which is inconsistent with police values and police protocols, is integral to effective – effective making of junior police accountable?---Yes.

And do you accept too that stern disciplinary consequences imposed on police who violate their responsibilities under the – the Code of Conduct, is necessary, to give a clear signal?---I think so.

We - - - ?---I wouldn't disagree.

And that gives a message to everybody that consequences will follow, if for instance, an individual repeatedly violates what is expected of them under a particular protocol or general order?---I agree. Impunity – impunity creates a sense of being above the law - - -

Yes?---And being able to get away with things. So intervention and consequences are important.

And ideally, stern intervention, so that others can see what consequences follow, and take that on board should they be minded to engage in similar behaviour themselves?---I agree.

And so it might be that that kind of stern intervention would be action to dismiss an officer in the public interest if they - - - ?---I agree.

- - - had violated their obligations on more than one occasion?---Agree.

If that were to happen, that could give a constructive message to other police that such behaviour is not tolerated?

MR OFFICER: Your Honour, I object to this line of questioning. It's not for this witness to comment on what is the outcome should be given to police officers. (Inaudible) police force with (inaudible).

THE CORONER: I don't know that her opinion assists me on these matters.

DR FRECKLETON: Thank you, your Honour.

THE CORONER: The only other thing I'd note is that effective early intervention, and effective disciplinary proceedings, also have to be equitable and fair - - -

DR FRECKLETON: Yes.

THE CORONER: - - - and perceived to be that way across the police force.

DR FRECKLETON: Do you agree with that Professor?

THE CORONER: And the community.

DR FRECKLETON: Sorry, your Honour, I cut you off, I didn't mean to?---Yes equitable and fair, definitely.

You have referred in your evidence, and also in your report, to community policing, and community policing values?---Yes I have.

Where up to 95 percent of policing work in the Northern Territory, involves interaction with Aboriginal persons, that has a particular resonance, does it not?---Yes.

And when police discharge their obligations, under s 5 *Police Administration Act*, to which I made reference earlier, in communities of under 1500 people, that requires a particular style of community policing, does it not?---I think it requires community policing. I think that community in policing would involve the community, be by consent, and the community should have some control and say in – in who polices and how policing is done.

It means that coercion is virtually not an option where there might only be two or three police and hundreds more members of the community where order needs to be maintained?---I'm not sure that I agree with that. I think – I think it's important that coercion is avoided where it can be. But we know that it can't always be. And we know that – we know that in places that are quite remote and where police are vastly

outnumbered by the community members – Aboriginal community members, and that – and where it's not easy for them to get backup in quickly we know that the police nevertheless sometimes use high levels of force.

Are you aware of the usage of Aboriginal community policing officers and Aboriginal liaison officers in the Northern Territory?---I am. I wouldn't say in a huge amount of detail but I know the principles, I know that they're used. I know that they have particular skills and connections to the community, and relationships that are highly valued and highly valuable and really do fit in with the model, I would say, of community policing.

And would you say that that is a form of policing which is appropriate for remote areas?---I would say – I would think it would be.

And on occasions such policing would involve attending police and Indigenous members such as ACPOs and ALOs attending community meetings in relation to issues of concern, and being involved in mediating disputes?---I presume so, yes.

Even attending Sorry Business and speaking with family members about what is troubling them at any given time?---I expect those – those police officers, liaison officers, and – I'm not sure if all communities have or did have night patrols – I expect their leaders and well respected people within the community generally all go – you know, I'm not aware of any research about it, or I haven't read or heard detailed accounts of it, but from what I understand they're successful community policing activities, models.

But integral to that is it's personal efforts made by Indigenous and more particularly non-Indigenous members of the police force to make contact with and establish constructive relationships with leaders within any given community?---Correct. But – yes.

And those kinds of efforts to integrate into a community, to mediate disputes, to communicate with Elders are quite different from paramilitary policing in any way, aren't they?---They are, yes.

And do you say to her Honour that on the basis of the information to which you're privy that that is not the way in which generally policing takes place in remote areas in the Northern Territory?---I can't say about – I really can't say about generally in the Northern Territory. I can only – you know, at this inquest I know there was an occasion where it seems like – I'm thinking about the events of this – that have led to this inquest that - - -

Yes?---So I don't really kind of – I'm not sure of the significance of the question.

And in that particular context what occurred was that a group of men from Alice Springs who were all members of the immediate response team were deployed and acted inconsistently with a written plan that was in existence. Are you aware of that

plan?---I am aware – if you mean the plan that was made by the senior policewoman in the community - - -

Yes, that's the plan?---Yes. Yes.

And that plan, was that that Kumanjaya be taken into custody at about 5 o'clock, or 5:30 in the morning so as to minimise the risk that anything like an incident that had happened a few days before recur?---Yes, I understand that. And I – if that's the evidence, that the IRT ignored the plan, which I think it is, yes, I agree.

So if there was a plan and members acted inconsistently with it, for whatever reason, that identifies that a group of individuals have behaved in a way which is unacceptable and incompatible with what was initially conceived at least, that they should do?

THE CORONER: I'm not sure that an opinion - - -

DR FRECKELTON: I'll withdraw. Thank you.

THE CORONER: - - - from Professor McCollough would assist in this regard.

DR FRECKLETON: Thank you.

Professor, I'll move to another topic. Have you looked at the Territory Response Group general order?---I don't have it in front of me. I've probably referenced it. I think - - -

In general terms your (inaudible) - - -?---Yes, (inaudible), so I've read it.

You have it, all right. You're aware - - -?---But if you could remind me of what it is.

Yes, the general order at par 14, if that helps, sets out – and I don't need to go into details about this – a variety of general support functions which the Territory Response Group has?---Mm mm. Yes.

Now, there are occasions where there's a need for supplementation of personnel or where there's been an emergency by reason of fire or flood, or similar, and Territory Response Group personnel are sent to assist a community. Do you have any problem with their doing that?

THE CORONER: I think she'd need to be taken to the specific order and the specific examples of where and how they might be used. I don't think it's helpful to put it in such a (inaudible) way.

DR FRECKELTON: I'll just check, your Honour, what's readily available. So I'll simply do this to move through it, do you accept that there is some utility in supplementation of resources, albeit if it comes from a specialist group such as the TRG?---I do feel like I've answered this. Potentially, as long as there's no coercive

force involved and they don't take their – they're not – they're not armed. And by not armed I don't mean just not armed with firearms, that they've not got the accoutrements of force that a general duties police officer would have. Because, well – possibly. But they can't take the – they can't take the paramilitary paraphernalia with them.

No. They shouldn't, in short, behave in a paramilitary role, style if that's not their designated role on a particular occasion?---That's right, but their role – given issues about highly trained paramilitary police have been trained to use high levels of force and, and often instantaneously, I think it's important that the don't be deployed in other more general duties sort of capacities that involve coercion. So I don't think they should be involved in general duties policing, although it may be reasonable to have them involved in support activities around floods, fires, or other things like that. Is that what you're saying?

Yes?---Yes. That's – I think we've been there.

Well, we've talked about it with one group. I'm asking about the TRG now. I'll move away from there?---Sorry.

Not at all. You would not propose that persons stay for their entire career with a specialist unit such as the TRG, would you?---No, and I do – I think – I think her Honour in her point about how do you transition out of a group like that is pertinent here. So those TRG – even by virtue of getting older and not having the physical fitness, they are going to want to transition out and they should be able to continue their career if they want to in the police force. But how that's managed is important.

What would you recommend in terms of transitioning TRG personnel to other duties which they might be asked to perform?---After their TRG – yeah, after the - - -

Former members of the TRG and then it's time for them to go back to being a detective or to work in a general duties context?

THE CORONER: Well they don't necessarily have to go into those contexts, do they? There's many other roles that don't involve frontline policing.

DR FRECKELTON: But it's – I'd like to ask the professor – I'll go straight from there.

Are you suggesting that by reason of having spent some years in the TRG they ought not to engage in frontline policing?---I think – I think there has to be a careful consideration of that and how they transition, because it is – and I think have to consider what those members want to do. I'd imagine it would be hard for a member who's been in, you know, at the pointy end of policing, had all that training in, you know, use of force, to actually transition into the more mundane, you know, 95 percent of your time spent doing service activities rather than in inverted commas, crime fighting. So there has to be real consideration and careful consideration about how that is done. I don't think it would be right to say it couldn't be done. Industrially

police members who've been in those specialist groups should be allowed to continue their career if they get – if for reasons like, you know, medically or physically they become unable to continue in those groups or they don't want to. But the fact it's done, how they are transitioned (inaudible) I think. And I think I talked about this before, I think it's very important but I don't really know the answer. I don't know what happens in other jurisdictions in this regard. Perhaps, you know – and I think her Honour was suggesting that, you know, that there are a – that police organisations are huge and there's a lot of roles, leadership roles that don't require, would never require use of force, they're not frontline positions at all. And that might be a suitable career path. But it definitely needs some serious consideration. Also some research, what's happening globally in that area. It's a really interesting question.

You're not aware of research which deals with transitioning people after they've spent what might only be a brief few years in a specialist unit of this kind, to when they return to other duties?---No. And I think it's the same question as how you prepare ex-military, particularly those – not only those, but particularly that have been in warzones. How do you prepare them for policing. How do you transition them out of the training and experience they've had into a civil police force. So I think they're the same questions and they're great questions to ask. And we don't – I don't think we have the answers and I don't.

All right, thank you. Let's go to that issue that you've just raised. What the Northern Territory Police Force has committed to in terms of recruits who have seen prior service in the military, is to have a special designated section of their training devoted to emphasising the different roles of policing as against their responsibilities in the ADF. Do you regard that as a constructive initiative?---I do regard it as a constructive initiative and I also think that that – the – that strategy needs to be independently evaluated or evaluated to see what kind of impact it has and whether it is sufficient or how it needs to be changed or whatever. Because – and again I think it's worth looking at other jurisdictions, international jurisdictions, etcetera, to see if there are examples. Some of those – if there are examples, some of them will be evaluated. I don't think you can just assume they'll be effective. You really have to experiment and evaluate and make sure that they're doing the job they set out to do. Some sort of tick box – and I'm not suggesting this suggestion, but some sort of online thing that says what's the difference between the police and the military is not going to work. It has to be more substantive and thought through than that.

So is your position that having that component in recruit training, particularly for ex-ADF recruits is constructive but then there needs to be follow through to identify whether it has worked by accumulating data about whether former ADF people who have done that extra training are engaging in excessive use of force or any use of force more often than non ex-ADF people?---That would be worth doing. But when I say evaluated, I mean there are ways to evaluate training in a more kind of tighter time framing that (inaudible) logical – some sort of control before they do the training, compared to afterwards. Can you see that the training – some ways of measuring the impact the training has had, not by seeing what they do in the field, but by seeing what shifts, if any, there have been in their attitudes, etcetera, afterwards. I'm not an

evaluator of training but I know it's typically – it can be done and it's done in quite a sophisticated way.

But at any rate, sophisticated qualitative and perhaps also data based evaluation including external input would be constructive?---Absolutely.

Thank you, your Honour.

THE CORONER: Are there any other questions?

Mr Officer.

MR OFFICER: Thank you, your Honour.

Professor, my name is Luke Officer and I act for Constable Rolfe. Can you hear and see (inaudible)?---I can hear and see, Mr Officer.

You'd be aware from your research, would you, that at a basic level police officers are all trained in the use of force philosophy of a particular police organisation when they join that particular force. Would you agree with that as a general proposition? ---Yes, definitely.

Have you read any of the – and I won't take you to it – but the defensive tactics manuals in the Northern Territory and the use of force philosophies that sit behind it?---I believe I have. And they're fairly standard around Australia. They relate to use of minimum force; the success of an operation will be defined by the extent to which force is avoided. They're all the standard things. I think I read it and there was nothing that would deviate substantially from any of those kinds of tracks about use of force that are used in democratic police forces around the world.

Yes. And you'd be aware that tactics that they're trained in are at its lowest level, empty hand tactics, all the way up to the use of lethal force being by virtue of firearm and everything in between, you'd be aware of that?---Yes.

So when you said in your evidence earlier that these specialist groups are trained to use force, to use higher force than general duties, what do you mean trained to use higher force than general duties?---They're trained to use the type of force that would be appropriate, for example, in a mass casualty attack or a counterterrorism incident which might involve potentially mass casualties. So they're trained to use exceptional use of force and to survive in situations of risk. So for the first 20 years as a police tactical group's life they trained for about three weeks a year with the Special Air Services who (inaudible) the military's commando unit, in the type of – the type of use of force that would be used in military conflict. And they don't train, as I understand it, now with the military but that's because they've got the capability within their own ranks having been developed over that 20 years of training with the SAS. So yes, you could imagine that a group that's been set up with a rationale of countering terrorism, and being involved in high risk situations like siege and a mass

casualty attack, is going to be trained to use force in a different way than general duties police. And they use different weapons too.

Yes, that was my question. You also said they have all these skills and weapons and a tendency to want to use them, so that seems to me that you just said skill orientated and weapon orientated. Is that the point you were making about militarisation?---Well that – the weapons are a material aspect of militarisation. The skills are an operational aspect of militarisation. And wanting to use them, in part's a human aspect, if you've got skills you want to use them. But also there can be a warrior mentality where you've been trained to use lethal force, and to expect that you'll be engaging in operations where there's a great deal of risk. Might be – might be difficult to accept that there aren't any occasions when they can be used. So there's a kind of – like I said, a mission creep that comes in, where people are trained to use these high – or can potentially come in, if there's not vigilance against it.

Can you discern with any degree of certainty or confidence, whether or not an individual is militarised?---Well I think – I think that where there are a number of complaints against an individual, particularly in relation to use of force, or particularly in relation to certain types of people, racialized, people who are racialized, etcetera, yes I think that sometimes you can. And I think - - -

Sorry?---I'm not – I'm not suggesting it's easy.

So my question is, can you discern with any certainty, or real confidence, whether an individual is militarised?

THE CORONER: And the answer was yes, sometimes you can.

MR OFFICER: With the exception of just complaints? For example, Professor, what if a police officer is engaged in 46 use of force incidents, of which only 22 involve the use of an accoutrement. Can that give you any evidence of militarisation of an individual?---So perhaps we can just go back a little, because you asked me if it's just about use of force. And complaints about use of force. I think you should – I think it would be wise to consider that members who are in para-military groups, have been militarised. And that is not necessarily inappropriate in the context of the high risk operations, the counter-terrorism thing that they're – that the rationale for those briefs is. The thing is, they shouldn't be involved in general duties. And then that's why the questions about transition out of those groups come up, because it – there is an acceptance, that once you're in those groups, once you train to that – to use that high level of force, then – that you do need a transition back into general duties. And so I think the default position is, they're militarised. They're highly militarised. And there – and I don't think those in these groups - I could be corrected, they don't – they don't resole from the label para-military. No one's suggested they – they are not para-military police, they are. And the counter-terrorism arrangements at the Commonwealth level, accept that they're para-military police. They are police, but they're para-military. Meaning they're straddling the line between the police and the military.

Yes, but that's not – my question was based on whether you can actually identify an individual with military – or militarised attributes. And it seems to me your response is well you just start at the general proposition that they are, because they've been involved in elite units. That can't be right surely?---I think it is, because they're para-military police.

All right, could I ask it this way?---So they're militarised.

A police officer, who's involved in 46 use of force incidents, 22 of which involved the accoutrement, an accoutrement of some sort. And 54 percent of them relate to handcuff usage, how is that indicative of militarisation of that individual?---Sorry, housekeeping's just come to my hotel room, but – I don't – I don't know the context. I don't know if it's indicative of militarisation. And I don't know why it matters, because I've already said, if they're in a para-military group, you can assume that they're para-military militarised police.

Sorry, are you applying that to every single police officer? That just because they're part of the Northern Territory Police they're militarised?---Not because they're part of the Northern Territory Police, because they're part of an immediate response group, or they're part of a police tactical – immediate response team; I mean, or a police tactical group. So I assume that you're talking about your client. So he was – he's an ex-military. He was – he's done some military style training in the US to enhance his skills, and then he's in the Immediate Response Team. I would assume that he's militarised. And that's why he shouldn't be involved in general duties policing.

So your evidence about Constable Rolfe, is you just assume he's militarised. You've got no evidence to actually substantiate that he in fact is or was.

THE CORONER: Well she actually just provided a number of factors that she took into account, to support that assumption. So it's not that she's got no evidence. She's identified his ADF background, his decision to continue with training when he was no longer in the ADF. And his choice to enter the IRT, and the training that he's received, in the IRT.

MR OFFICER: Professor, if someone with 46 use of force incidents, 22 of which involve an accoutrement, 54 percent of those involve handcuffs, which on my calculations is 12, 4.55 percent of that, relates to the usage of a baton, or presentation, that's one, on my calculation, 22 percent of those are the OC usage or presentation, which is five on my calculation. Another 4.55 percent of those 22 is the Taser usage or presentation, that's one on my calculation. And 13.64 percent of those, is firearm usage, or presentation, which is three on my calculation. How can that be of any evidence that Constable Rolfe is militarised as an individual police officer? It suggests the opposite, doesn't it?---I've really got no comment on that. I can't sit here and do calculations and think through the implications of all that, after giving evidence for more than three hours.

Would you like a break, for me to return and repeat the question?---No.

I've nothing further, your Honour.

DR DWYER: Just briefly, if I may, your Honour, cut into the lunch break.

THE CORONER: Sure.

XXN BY DR DWYER:

DR DWYER: Professor, my name is Peggy Dwyer, I'm Counsel Assisting the Coroner, of one of them. I just want to start with some general propositions about the ADF. You would accept, wouldn't you, from your research, that there are many good qualities that might be useful as a police officer, to come from persons who would have been members of the ADF previously?---Potentially, yes.

For example, potentially, good discipline?---Well there – there is – I think it is suggested that former members of the ADF are disciplined and efficient. They've got particular skills. And I think that could be important, and that it would be wrong to exclude them from recruitment into the police force, but those skills, that discipline, that efficiency, it depends to what use it's put, and in what framework. If those skills, that discipline, and that efficiency is considered to be put towards a mission which is about – which is about overcoming enemies or conquering then they're not helpful. I think it's the mission that's really important. What are those skills put towards? If they're put towards protecting and serving I think that's good. If they're put towards being a warrior or an extreme version of crime fighting that involves high levels of force I don't think they are skills and attributes that necessarily enhance policing. So I think it depends on the framework.

Let me give you an example of where they might be – where skills that they've developed previously in the ADF might be of particular assistance. You would image that there's skills in terms of mapping, tracking, orienteering would be of particular use in the large landmass of the Northern Territory where people often go missing and need to be tracked down?---Yes, that seems like a very reasonable proposition.

You've made a point that you're not suggesting that all members of the ADF should be excluded from the Northern Territory Police Force. Doesn't it also depend on the skills that are overlayed? So for example, members are recruited into the Northern Territory Police Force and then if they're provided training on what the expectations of the Northern Territory Police Force are then that might mean that they can be suitable in the role?---It might mean that but I guess we need to know more and ask about the impact, how easy it is to transition from the ADF where the mission is quite different, it's fighting wars, using high levels of force against enemies, to a civilian police service. That kind of transition, program of transition where those skills and the difference – the skills that are needed for policing, and the difference between the role of the police and the military - - -

Have you read the - - -?--- - - - make - - -

Have you read the evidence of the Northern Territory Police Force put on recently that there is program of transition for ADF officers now in place?---Yes. I haven't – I think I've seen that but I haven't – I don't know about the details of the program - - -

Are you aware of – sorry, Professor, I'm just trying to keep it short because of the time constraints. Are you aware of any other jurisdiction in Australia that has such a program?---Just Tasmania, and that's only from reading the evidence that's been given at this inquest.

You've been asked some questions about previous incidents of use of force that relate to Constable Rolfe. My learned friend, Mr Officer has just made the point about there were 46 use of force incidents. There are a smaller number of those that have been identified to be excessive. And there is a debate amongst the people who are reviewing them after Kumanjayi's death as to which – the maximum number might be five but in fact the Northern Territory Police Force review by Commander Proctor says only two. And there's an issue with body worn video. I just want to read this to you from – there's a Superintendent Reid who notes that in June 2019 she spoke to the commander of Alice Springs, Commander Currie, and the superintendent covering Alice Springs, Superintendent Vicary, and advised them that she was reviewing a number of complaints referred to her by the Office of the Ombudsman where NAAJA had raised concerns with complaint outcomes. She said she was concerned about Constable Rolfe's non-adherence to body worn video policy and that this was the third occasion that she'd become aware of people fleeing from him and injuries occurring whilst that happened. She has raised a concern – I just want you to focus on the use of force – three occasions of persons fleeing from Constable Rolfe with injuries occurring when apprehended. Now, there could be a number of reasons for that I'm going to suggest to you. On each occasion his actions could have been reasonable, or on each occasion his actions could have been unreasonable. He could be suffering from stress or it could be a lack of training. It could be any number of reasons. But there is no evidence that any superior officer sat down with him and asked him questions to illicit the reasons for those use of force incidents or gave him any guidance as to what to do. That suggests, doesn't it, not a problem necessarily with – well, certainly not just a problem with an individual officer – but a problem with oversight of a young officer? ---I agree with you absolutely. I think there are obvious issues related to an individual but there's also suggestions or evidence, I would say, of systematic failures to intervene and to pick up what should have been red flags along the way.

He was at that stage in 2019 a young officer who'd been in Alice Springs just a couple of years. He could have – there is a system for review of use of force events, you're aware of that?---Yes.

Let's assume for the purpose of my question that on each of those three occasions where persons suffered head injuries when they were fleeing, Constable Rolfe believed that what he was doing was appropriate and he was acting in good faith. If a use of force system tells him at the end of each of those reviews that he's done nothing wrong it's a bit hard to sheet the blame just to him, isn't it?---It is more of a systematic problem. But the individual police officer to some extent, or to a large

extent is responsible as well. Excessive use of force, even if not held to account for it, is a serious breach of the duty of an officer. I mean, they're meant to uphold the law, not to be breaking it.

I'm just going to take you to – while I'm on the process – on the issue of supervision. Mr Derrig read to you some text messages and other messages that came from Constable Rolfe. We have the entire volume of text messages that might be relevant in the brief, so for the – I will read it to you, Professor, but for the benefit of my friends this is 3-161. And from page 7400 of that document. There's an exchange that we see between Constable Rolfe and the sergeant who was heading the IRT, Sergeant Bauwens. Earlier in the messages Sergeant Bauwens asked Constable Rolfe how he went with the quotes and he says,

“Just talked to Vicary. Got us 2000 operational rounds and gave her a heads up about the quote. She's happy with about 40,000, which is wicked. Can get us everything. So once I get the quotes complete I need three quotes for the same shit, she'll put it through.”

That was on 20 March 2019. The reply from his supervisor, Sergeant Bauwens, the head of the IRT is:

“Good work. Didn't think we needed three quotes for the tactical gear, we just chose what we want. Either way we'll be good. This New Zealand thing may help us out for sure.”

That was 20 March 2019. On 19 March 2019 there was the Christchurch Massacre and the tragic death of 50 people. So his boss is telling Constable Rolfe on 20 March, “Good work sourcing those quotes. That'll be good. This tragedy in New Zealand will help us” – presumably he means to get that equipment. So again, I'm going to suggest to you, Professor, hard to blame the individual officer there when the messages from his superiors, Sergeant Bauwens and Superintendent Vicary, the head of Alice Springs, is “Good work, that's your job. Thanks for sourcing that”?---Yes, well I think it goes back to a line of questioning and a back and forth between myself and Dr Freckelton which is about yes, supervision is important, early intervention is important, but the supervisors have to – have to adhere substantively to the principles of good policing. And it doesn't – if the junior officer is learning the culture, a distorted or inappropriate culture from the senior officer then a senior officer's intervention or mentoring, or feedback is not going to be helpful at all.

But also there needs to be – if you want your police officers to not focus on accoutrements and not focus on using tactical options – I withdraw that – to focus on use of communication and other what are sometimes called softer skills. If you want them to be valued, you have to model that behaviour within the unit and force, don't you?---Yes, absolutely you do.

I just want to ask one other topic. We have heard from police in Alice Springs about some very challenging aspects of their work. For example, Senior Constable Brad Wallace, an Arrernte man and very experienced officer talked about how confronting

he found doing shifts again in Alice Springs over the last couple of years. At 2:00 or 3:00 in the morning often officers are there called out to difficult jobs where people might be injured and you've got a number of people who come from very traumatised backgrounds. In those circumstances skills of communication and de-escalation are vital, aren't they?---Extremely important.

And in those circumstances you'd be aware from your work, Professor McCullough, it's often just police who are there to try and deal with those confronting situations? ---Yes.

Are you aware of any police service around Australia which is assisted in those circumstances by skilled social workers or other experts?---I think there used to be crisis response teams. I'm not – which did involve a number of different services. But I think the model that – you're quite right, if this is what you're getting at. The police officers are the frontline of what are often social problems. And they're hard to resolve and there are a whole lot of skills, whether they be social worker or psychologist or youth workers, that are probably just as appropriate and more important to have them involved. The police often, you know, are picking up problems a long way down the track. They can't solve the problem often but they're left to deal with them. And those social nets, those social supports are extremely important to ensure that problems, underlying problems don't turn into crime problems.

And Professor McCullough, are you aware in – what I anticipate her Honour will hear – and we heard some evidence of it – is the vicarious trauma that many first responders experience, including police?---I'm sure that's right but I'm no expert in that.

Are you aware of anywhere in Australia that provides supports to police when they have to go to difficult jobs where they're going to experience trauma. So along the lines of what I just spoke to you about, any first responders other than police who can assist in difficult circumstances?---Well I'm sure there are first responders like paramedics or - - -

What about – are you aware of any police force around Australia that has a team of social workers that can assist in the early hours of the morning when you've got to deal with the trauma that Northern Territory Police do?---Look, I'm not aware of that. But also I'm not – it's not entirely within my area of expertise talking about militarisation. But I think, you know, it would be very consistent with a community policing model to have those range of services available and to the police to be working with youth workers and social workers and I think it's a really good model.

Thank you, your Honour, nothing further.

THE CORONER: That's the end of our questions. I'm sorry that it was such a long session, Professor McCullough and you've obviously provoked a lot of thought amongst the counsel and a lot of thought for myself in relation to the expertise that

you've brought. Thank you very much?---Thank you, your Honour. It's been a pleasure.

WITNESS WITHDREW

THE CORONER: We'll adjourn. We'll return at 2:00 and we do need to finish at 4.30 today, so I'm reminding you in relation to the next witness.

ADJOURNED

RESUMED

THE CORONER: Mr Coleridge.

MR COLERIDGE: Good afternoon, your Honour. The next witness is Mr Ben McDevitt. I call Mr McDevitt. He'll be appearing via AVL.

THE CORONER: Thank you.

Mr McDevitt, it looks like you're on audio, thank you. Mr McDevitt, it's Judge Armitage here. Thanks for making yourself available to assist with the inquest. It is very much appreciated.

BEN MCDEVITT, affirmed:

THE CORONER: Thank you?---Can you hear me okay?

I can hear you. Did you have any difficulty hearing me?---No, it's okay. It's just that my computer is sort of stuck up against the wall, so I didn't know if I was close enough. I'm sitting behind the desk.

Okay, yes. No, it's pretty good at the moment. If we have any difficulties, we'll let you know?---Thank you, your Honour.

But we'll let Mr Coleridge see how you go?---Thank you.

If you can't hear Mr Coleridge, let us know, because he's a little bit further away from the microphone, and we can make arrangements for him to be closer to the microphone, if you need it?---Yes, your Honour.

XN BY MR COLERIDGE:

MR COLERIDGE: Mr McDevitt, before I ask you anything further, can I ask you to state your full name?---My full name is Ben McDevitt.

And your current occupation?---I'm retired.

But before that, you spent something like 38 years in various law enforcement roles?---Yes, that's correct.

Before I ask you anything further, I understand that you would like to say something briefly?---Yes, your Honour. I just wanted to just make a couple of opening words, if I could. I'm aware that members of Kumanjaya Walker's family and the broader Yuendumu/Warlpiri Community may be present in the court or listening, and I just wanted to say a couple of words. First, to pass my sincere condolences upon the loss of Kumanjaya, and I feel for his extended family and the Yuendumu Community in their anguish and pain at his loss. Obviously, I am Kartiya, not Yapa, and I do not have any in-depth knowledge or understanding of Warlpiri history, language or

customs. I think that I, like many other Australians, Kartiya, am poorer for not having this knowledge and understanding. I will try to answer all of the questions that are asked of me in as honest and as sensitive a way as I can, and I apologise in advance for anything that I might say which you may find offensive or disrespectful. While I've been to several locations in the Northern Territory, both for leisure and for work, I also hadn't had the opportunity to actually ever visit Yuendumu. But I wanted to make that clear as well. From time to time during my career, I have had the opportunity to spent short periods in the Northern Territory. The most recent was last year when we worked for a short period in Uluru-Kata Tjuta National Park and also in the Kakadu National Park, and it was an absolute pleasure to be able to do that. The Northern Territory is obviously unique and diverse and rich in many ways unlike the rest of Australia. I also want to say that my work over the years has involved interactions with many members of the Northern Territory Police and I have many friends in the Northern Territory Police. And as such, I've come to deeply respect the challenging nature of policing in the NT. I do have some awareness of the tyranny of distance and the challenges of remote localities and the vast distances and limited resources and other challenges that are faced by the Northern Territory Police. Obviously, the majority of my law enforcement service was with other agencies. I did work in community policing in the Australia Capital Territory, which has a different set of challenges and also with national law enforcement agencies, such as the Australian Federal Police and the Australian Crime Commission. So, I haven't served as a police officer in the Northern Territory. I haven't worked in a remote community such as that, other than my servicing places like Bougainville and the Solomon Islands. Therefore, like everybody, my views are largely through the lens of my own lived experienced. The opinions that I express, they're relating to management and leadership and use of forces. I've obviously drawn largely from my own experience and I have had the opportunity to assess the material which was provided to me in the lead up to the trial of Zachary Rolfe. However, unfortunately, I haven't been able to follow in detail the workings of the inquest and it's probably fair to say that I haven't heard most of the evidence given by the witnesses that you've heard from. That said, all the things I say are strongly worded, but I do wish for this court to know that everything that I say is simply aimed at contributing to institutional reform and I say anything with any malice or ill feeling. Thanks, your Honour.

THE CORONER: Thank you.

MR COLERIDGE: Mr McDevitt, I won't go into detail, but before I go any further, I also wanted to acknowledge, because that it might be significant for those listening, that you've made yourself available at the time of quite extreme personal difficulty and that's it's indicia of your commitment to this process that you've done that. So, thank you for being here?---Thank you.

Now, I'll come to the nature of your experience, study and qualifications in a moment, but certainly, you were called at the trial of Constable Rolfe as an expert in police use of force training and methodology. Is that correct?---Yes, that's correct.

And you gave a report for the purposes of those proceedings on 29 June 2021?
---Yes, I did, and I've got that report with me.

And your Honour, for the record, that's at 10-26 of the brief. And you subsequently gave evidence at Constable Rolfe's trial on 8 March 2022?---Yes, that's correct.

And your Honour, the transcript of that examination is at 10-27A.

Now, because I'm aware that we're pressed for time, I won't ask you too much in detail about the opinions themselves, but I thought that I might summarise them. Your opinion in respect of the events inside House 511 and in particular, in respect of the three shots fired by Constable Rolfe, was that the firing of those shots in those circumstances was lawful and consistent with relevant Northern Territory Police Force policies?---That's correct. It was consistent with the policies and with the training.

However, you were also of the opinion that when trying to understand what when wrong, if anything, on 9 November 2019, it was necessary to take a broader view and not just focus on the events that occurred inside House 511?---Well yeah, that's correct. In a nutshell, my personal belief is that those two young men, Kumanjaji Walker and Constable Zachary Rolfe, probably never should have met. But then I believe that quite frankly, the reasons that they did was largely due to a tragic failure of leadership.

And some of the issues you identified were issues of planning, for example?---That's correct.

Communication?---Yes.

And when I say communication, I want to be clear, we're not just talking about the communication between the members of the IRT while they were on the ground, but also talking about communication between that unit and the police forward commander, to the extent that there was one, Sergeant Frost, and members of the executive who may or may not have been involved in the deployment of the IRT? ---Well that's correct. And largely my view is there was a – just a significant lack of executive oversight.

And finally, you identified problems of leadership, as you've just said and I think that the most significant one was that there was a real lack of clarity about who the leader was during that deployment. Would you agree?---That's exactly right. There was no clarity whatever of leadership, of command and control. There was no underlying risk assessment. There was no proper planning process. There was a sort of a plan and if you want to, I'll talk about that plan, which I believe was fundamentally flawed anyway. But I just think there were just a whole range of factors that largely that really go back to the events of 6 November. I think if the response to that had have been handled correctly then that's why I say I don't think those two young men would ever have met.

So what I might do is call them the systems failures, if that makes sense?---That's correct.

But you also identified in your report and at trial or made some criticisms of some of Constable Rolfe's broader conduct leading up to his entry into House 511?---That's correct.

And I won't take you through these exhaustively. But they included, for example, the observation that Constables Rolfe and Eberl allowed themselves to get too close too quickly to Kumanjaya Walker within House 511?---Yeah, but that's -- that's correct. I think the problem for them and I've seen it on a multitude of occasions that they seem to have put the priority of identification of who it was that they were talking to, up front. And that led them, I think, to close the gap with Mr Walker, which you know, I think they shouldn't have done. They could have established his identity from a safer distance, if you like.

And indeed I think that's exactly what you said at trial, page 1262, that this singular focus on getting in there and establishing identity and closing the gap meant, in your opinion, that there wasn't enough of a focus on their own safety, for example? ---Yeah, that's correct. As I said at the trial, I mean the -- you know, that your safety is largely reliant on your reaction speed, a large factor, a large component which is distance of help. You need distance to be able to respond in time.

And so I'm confident that you had set out most of these observations in your report and your trial evidence, so I'm not saying they're not important, but given the time, I won't go through each of the observations you made at trial. But in summary is it fair to say that when trying to understand why deaths like these occur and when trying to work out what we can do to prevent similar deaths in the future, we'll need to rigorously examine both the conduct of individual officers and systems that might have failed or failed those officers?---Yeah, well that's exactly correct. I mean the ethic of minimum force shouldn't be about sort of management rhetoric, it should be, you know, something about the whole culture of the organisation, like part of a DNA of the organisation.

So what I want to quickly do before handing over to some of the other parties is ask you some questions about qualifications and experience. Now during your opening comments, you said something about the nature of your experience with the AFP and in the Australian Capital Territory. Mr Edwardson QC in fact took you through your experience at trial and I think you agree that you were the longest serving member of the AFP special operations team, is that correct?---At the time that I left, that's correct, it was in the order of 12 years.

And the special operations team with the AFP is in effect the equivalent of the Northern Territory's TRG?---That's correct.

You were chief of firearms at the AFP?---Yes, I was the Chief Firearms Instructor for the AFP and the defensive skills instructor for the AFP. So basically, what that meant was that I was responsible for training of AFP members through the whole spectrum of use of force right from everything from teaching recruits how to use

handcuffs through to training the special operations team on how to deploy gas or breach a terrorist stronghold, etcetera.

And you also trained police negotiating?---That's correct.

I just wanted to ask you two questions about your experience, one of which I think you've already answered. I think you recognised that although you have some training and experience that is very valuable when trying to understand what went wrong on 9 November 2019, you also recognised that you gained that experience in a very different policing context?---That's correct.

For example, dealing with matters like counterterrorism, drug scale drug importation, things of that kind?---That's correct.

And that you respect that policing in the Northern Territory – I withdraw that. The second matter I wanted to ask you about – and this is another matter that was highlighted by Mr Edwardson at trial – was as report you authored in 1996?---That's correct. That was a – between – I started in about 1994 and I think completed it in 1996 and it was an entire review of everything that the AFP did in relation to use of force and to be frank, I think you know, I think we had some fundamental issues to deal with in that the – at that time the use of force training seemed to be – seemed to be focused on the higher levels of use of force. So for example, you go to – and these aren't the exact figures – but if you had a sort of five day use of force program, maybe three days might have been spent on the range, which is – which is important in its own right because, you know, if you're going to give an officer a firearm, then they need to be trained to use that correctly to the extent where that they can almost gain what we call an unconscious confidence in the use of the firearm, you know, for any critical situation. But you know, what you've got to remember is most arrests are made without any use of force. And I always used to tell recruits and everybody else that an officer's verbalisation skills would save them long before any marksmanship ability or physical prowess. And also that, you know, aside from entrenched corruption, police use of force or abuse of force is probably the greatest threat to an organisation's image, you know, for the potential to degrade the image, and the trust held for a policing agency. As I say, other than entrenched corruption, I can't think of any other issue than can you know, bring grief to a – to a law enforcement agency, than an abuse of force. And – and that was why I conducted the review, because I wanted to shift the emphasis entirely from hard skills to soft skills, for confrontation management. And I don't know if you've got the report there, or had the time to look at it, but I made I think 27 recommendations. A lot of them were about you know, getting police better, and more training in soft skills, like dealing with difficult people, dealing with minority groups, cultural awareness. You know, learning about their own biases, you know, in particular, at that point in time, dealing with the mentally ill. Because around that time, there had been a lot of police shootings – a number around the country, but predominantly in Victoria, and this whole sort of notion or phenomenon of suicide by cop was very prevalent. And there was a lot of work going into that. And I went to Victoria and worked with them on what they called Operation Beacon. And yeah, a lot of effort. Going into, you know, other ways of confrontation management. And you know, there were a lot – at that time, there

wasn't things called Tasers. But there were things called stun guns and OC spray was making its presence. And I recommended that we introduce OC spray into the AFP, and it took me three years, but we did introduce it.

So Mr McDevitt, the - - - ?---We - - -

- - - I don't mean to cut across you, I just might unpack a couple of parts of that. Before I return to the subject of the report, you're understanding, it is, and the evidence at trial was, that the new model you proposed was adopted by a number of police forces around the country, with some minor amendments?---That's correct, to my knowledge – to my knowledge, they all pretty much adopted the model, as – as actually did the United Nations for their peacekeeping missions.

And in particular, there was evidence at trial that the Northern Territory Police Force's 10 Operational Safety Principles, which begin with the overarching principle that the success of an operation will be judged by the extent to which force is minimised, were very much based on your work?---Yeah well they – I mean each force sort of couched it slightly differently in their own words, but – but essentially, that's true. That was the overriding philosophy.

I just want to circle back to one of the problems, and I should say that your report has been circulated to the parties, and is now an exhibit on the Coronial brief. I wanted to circle back and ask you a question about one of the things that you thought hadn't been the focus of sufficient attention in police use of force policy and training, and needed to be the focus of attention in training and policy in the future. And that was the issue of bias and a lack of cultural awareness. You recall that the report deals with that issue?---Yes, that's correct.

And in fact, at page eight of the report, you said, "That when teaching officers to use force safely, and when assessing their use of force in hindsight, bias and cultural awareness training was vital." Do you recall that?---Yes, that's correct.

And indeed, you said that it was vital that police officers ask, and I'm quoting from you, "What bias and cultural baggage are we carrying"?---Yeah I think that was the words I used.

Why are issues of bias, or a lack of cultural awareness, so important to understanding the use of force by police officers?---Well there were – there are – there are a whole range of issues in that. But I guess, at that time, I don't think we were – you know, people would – would say, you know, I'm not bias against any particular – I mean and back then we used the terminology minority groups, which I don't know if that's appropriate now, but that was what we used. And I mean, it was sort of largely – largely it was about looking at, not so much explicit or conscious bias, but sub-conscious bias, implicit bias, that was – may be it was – you know, when we were young children, and you know, by the time we were sort of, I don't know, certainly less than 10, we'd sort of formed views, and I don't know, when – when we got on a bus, you know, if there might be a disabled person sitting on a seat, and we would just choose not to sit next to that person.

And so - - - ?---Or we would – yeah, sorry.

No I cut across you, but I was just going to say, so these biases can be quite subtle, or even poorly understood by an individual police officer?---That's correct.

But your opinion, based on your considerable expertise in this area, was that they could still influence police decision making about use of force in ways that needed to be avoided or confronted?---That's – that's exactly right.

I think, as a part of your overhaul of the AFPs firearms training, you made some recommendations about target practise. Can you tell her Honour what that was? ---Sorry, about the targets that we used?

Yes?---Yeah well one of the recommendations that I made at that point in time was to move away from targets which were actually black in colour. Which – which I didn't think obviously was appropriate. But there was nothing really sort of sinister, you know, if you look at the history of the sort of the development of the target. It was – it was really when you're on a – you know, on an outdoor shooting range, if you – you know, if you shoot it at a white target, at a distance, and hopefully, if you're lucky enough to hit it, there would be a small hole where the light would come through where the projectile had hit. And that – that's really hard to see on you know, light coloured paper. And so historically, that was why black paper was used for – for targets. So there was nothing sinister in it, but obviously when I was sort of looking, doing the final review, I just thought that was inappropriate. So we – I recommended we move away from that. And we did.

Is it your opinion that something as simple as shooting solely at black targets, might create or compound, some of these sub-conscious and very subtle biases, that then affect police officers decision making when they use force?---It's a good question. I'm – I'm not really sure, and yeah, I don't know what evidence there might be to support that, but I just - - -

Perhaps leaving the targets – perhaps leaving the targets to one side, and just taking the other sub-conscious or subtle racial – that deal with racial biases out for a moment. The reason that it's so important to understand and confront these is that they can affect, for example, a police officer's perception of risk when using force? ---That's correct.

So for example, it might cause the officer to assess a person of a particular race as being a greater risk to the officer?---Yes.

Conversely, it might cause a police officer to be less concerned by the risk their conduct poses to a person of a particular race, than they might otherwise be?---Yes.

And ultimately, that's in large part, why your report recommended that to ensure that the use of force by an officer is safe, racial biases need to be identified and confronted by police forces?---That's correct.

And that when looking to past instances of uses of forces and when trying to understand what happened and why identifying any racial bias might be quite important?---Absolutely.

And when looking to the future identifying such biases is essential to ensuring that force is avoided when it is avoidable?---Yes.

Now, obviously that requires a commitment by the executive – the force itself. Would you agree?---Absolutely.

But it also requires a commitment from individual officers?---Yes, that's right. It flows down.

For example, it requires officers to demonstrate some insight into their own biases or racism?---Correct.

Because if the don't you can't be sure that they're safe when using force?---Yes.

No further questions, your Honour.

THE CORONER: Mr Mullins?

XXN BY MR MULLINS:

MR MULLINS: Thank you, your Honour.

Mr McDevitt, my name is Mullins. I appear on behalf of the Brown family. Can you hear me clearly?---Yes, I can, sir.

I'm going to keep my voice raised not because I'm yelling at you but I want you to hear me?---Okay.

In your report of 29 June 2021 which has been identified, you make reference to the incident of 6 November 2019?---Yes, that's correct.

And you've said again this afternoon that that was a particularly important aspect of the interaction between Kumanjaya Walker and the police?---Sorry, the interaction three days later?

Correct, three days earlier. So the event of 6 November 2019 you say was particularly important?---Yes, I think it was critically important.

You described that is being "Highly dynamic"?---Yes.

"Very unpredictable"?---Yes.

And "Extremely dangerous"?---Yes.

And you only needed to watch the body worn video to determine that that was the case?---Yes, I did. And I read – I read a number of statements that were made by the officers involved in the lead up to the committal and read their evidence at the committal as well.

And from your expert knowledge you considered that any person who engaged with Kumanjayi Walker in an attempt to arrest him after that needed to exercise extreme caution?---Yes, I did. And particularly – I mean, at the time of 6 November when those two officers went to arrest Kumanjayi the primary purpose of the arrest as I understand it was that he was the subject of an apprehension warrant, which they were required to act upon. But once – once he had instigated that attack upon those two constables where he threatened them with the axe and then escaped he had then by that very action, I believe, made himself a much higher priority in terms of the requirement for him to be arrested and be brought to justice. And so, you know, it's probably open to consider then in his own mind he had now gone way above and beyond what had happened, you know, in terms of being wanted on the warrant and he had now committed I think what Sergeant Frost described as a serious and significant assault against the police. So that now became the primary cause for the requirement for him to be apprehended. Certainly in my view.

Now, I'm going to do your research a gross injustice by trying to summarise it in 60 seconds. Prior to the time that you did your assess and reassess model the approach to – often the application of force was linear in the sense that police officers moved from one step to the next until they got to the most lethal form of force, that's right?---Yes, that's correct. That was the general thinking. I mean, they still had the latitude, you know, if the circumstances dictated, to move directly to a higher level of force but the general thinking was that they would progress through that linear model and then – you know, so I shifted it to a situational model.

And the situational model allows it in fact to de-escalate and continue to de-escalate if possible, where necessary?---Absolutely.

And it's about assessing and reassessing and not necessarily moving forward in the linear model?---No, that's right. And that was why I called the report "Assess and Reassess", because that was the critical step in the cognitive processes that go through our minds – all of us, not just police – when we're confronted with a threat. We perceive the threat and we assess the threat as to whether – the danger it presents to us, and then we formulate a response, and then we, you know, direct the muscle action to implement that response. And so you've got to constantly be assessing the threat, you know, particularly in a dynamic situation.

Now, you say in your report there are multiple failures in the preparation for and execution of this particular event. And counsel assisting has taken you to some of those, including the absence of any risk assessment?---Absolutely critical.

The absence of any plan?---That's correct. There was a plan of type which apparently was debated as to who had seen it and when. But even if you looked at

the plan in its entirety quite frankly it wasn't a proper plan anyway, in my view. But – yes.

One witness has expressed the view that if the plan wasn't clear it was up to the IRT members to go back to the forward commander, Sergeant Frost, to clarify that. What do you say about that?---Well, I mean, as I understand it Sergeant Frost was appointed I think by Superintendent Nobbs to be the forward commander for the operation, so it was, you know, critically important for her to make sure that all the assets under her command who are going to be involved in that operation were very, very clear on the plan, on the roles and responsibilities, on the mission that was to be achieved, and on how it would be achieved.

You also say that the absence of any leadership was a significant failing?---Well, there was just – it was just totally lacking. I mean, the members of the IRT themselves didn't know who was in charge. And then when you go higher it doesn't seem that, you know, people knew who actually was in charge at an executive level as well, who was keeping an eye on this. I mean, the classic example is apparently, as I understand it, Superintendent Nobbs didn't even find out there'd been a shooting from his own police on the ground. He apparently found out from some health rep or something. That just shows what a breakdown in communication we've got.

You lay the blame for this at the feet of senior executive and management?---That's right.

But the IRT were trained. The members of the IRT were all individually trained. Why should they not take responsibility for this?---Well, I think they did have responsibility of course. They had responsibility at the tactical and operational levels once they were committed to the operation, then the decision making was over to them. But they – you know, their guidance should be strict and should be within parameters, and it should be absolutely crystal clear to everybody what the command and control arrangements are, exactly what resources were available and were used. And you know, quite frankly, you know, for something like that, in my view, you know, four men and a dog just doesn't cut it. But that's what they had on the ground and, you know, I'm sure they would say they did the best that they could with what they had. But it's up to the executive and senior management to allocate, and if you look at the general order that they've got on use of force, you know, that is one of the responsibilities of the senior executive, to ensure a risk assessment is done and adequate resources are allocated. And you know, when you've got a commander and a superintendent who neither have seem to have found the time to even look at the body worn video before they dispatched these people, then with no risk assessment then how could they possibly have known whether or not those resources would be adequate.

You mentioned in your report and in your evidence that when Constable Rolfe went to House 577, so that was the first house that he went to, that it was appropriate, as I understand it, that he had his hands on his gun as he made his way around the house?---Yes. I believe it was. My understanding is that's the exact house where the incident occurred three days prior. Correct me if I'm wrong on that.

And by having his hand on his gun he was ready to go to the most lethal source of weaponry that he had, that's right?---If necessary.

Now at the Supreme Court trial you were asked some questions about the evidence of Senior Sergeant Barram – and this is at page 1252 to 1253 of the transcript. I'll just read it to you. But you agreed with this proposition and I just want to make sure that you haven't changed your view. Sergeant Barram had said this:

“It appears to me that Rolfe fired shot one in defence of Eberl, in line with training to have drawn and fired his firearm, Rolfe must have formed the belief that therefore serious harm would result to Eberl and that he had no other option other than to shoot to protect Eberl from being stabbed”.

And that was your – you agreed with that proposition. Do you still agree with that proposition?---Yes, I did. And I recall correctly, I was actually led through each of the other options that may have been available and just went through them and explained why, in my view, they weren't appropriate.

And in fact you thought all three shots were appropriate?---Yes.

And it's the case, isn't it, that you considered that it was reasonable – let me go back a step. There are two components to this. First is that Rolfe must have – you accept that Rolfe must have formed the particular belief that Eberl's life was in danger, that's right?---Yes.

Now even if you had assessed that it was reasonable to do that in that context, it may still be that Constable Rolfe, if he gives evidence to this court and says well I didn't hold that belief, you're not saying he held that belief, you're just saying that the evidence that you had seen supports that?---That's correct.

Yes. Now can I just ask you about the 20 seconds between when Constable Rolfe was checking Kumanjaya Walker's identity of his telephone and the first shot. Can I ask you about that?---Yes.

All right. So in your report at 7.21.41 Constable Rolfe holds up his phone next to the face of Kumanjaya Walker who was then calling himself Vernon Dixon (?), to check his identity, that's right?---Yes, that's correct.

Now when he's holding up the phone to check the identity, Constable Rolfe is very close to Kumanjaya Walker?---Yes.

And he's showing no concerns whatsoever about his safety, knowing full well that that might be Kumanjaya Walker?---Yes, that's correct. And that was one of the – that was one of the areas where I thought there was a tactical error made by the constables that they had – I don't know if they had sort of accepted the rouse that was being put forward by Mr Walker that you know, he was Vernon Dixon or somebody else and the way it seemed to me on looking at the video footage, if

I recall, was that when he held the phone up, it almost looked as if – you see Kumanjaya Walker's eyes also turn to the phone and I – it seemed that to me that it could be open to consider that both he and Constable Rolfe probably realised that the photo actually identified him not as Vernon Dixon but as Kumanjaya Walker.

So then nine seconds later at 7.21.50 seconds, Constable Rolfe starts to use what you call soft hands, which is that he puts his hands on Kumanjaya in close range?
---That's correct.

He is still - - -?---I think it was – I think it was a hand, wasn't it, on – sorry, just correct me if I'm wrong, I'm not reading my statement at the moment. But he – I think he put a hand towards the chest of Kumanjaya, is that right?

Correct, correct. So when he does finally identify that it is Kumanjaya, he shows no signs of any concern, from what you can see on the video footage?---I wouldn't say that. I think he – I think he recognised probably about the same time as Kumanjaya – I'm not necessarily saying that is the fact that Kumanjaya also recognised that the photo was him – but it seemed that way to me and I think very shortly thereafter Kumanjaya was directed to turn around, I think to put his hands behind his back and it was then that he made the choice to launch the lethal attack on Constable Rolfe.

Correct. So the stabbing, according to your report, occurred at 7.21.57 and then the first shot occurred at 7.52.01, four seconds later, that's right?---Sorry, I can open up my report if you want me to, but I take it what you're saying is right, yeah. Did you say 4.1 seconds?

Yes, correct. So between the time that he put his hand on the chest and the time of the first shot was about ten seconds?---Yes. If that's what the – if that's what it shows there in the report.

Can I ask this question? In your experience is it unusual in this type of situation to go from almost no fear or no apparent concern about a suspect to lethal force in ten seconds?---Yes.

You would have often seen - - -?---I think that's in – I think that's – I think that's entirely possible and particularly with edged weapons. I mean the stats show that many, many victims of edged weapon attacks, that they don't even know that they were under attack until it's too late.

And you would have come across many situations where a police officer confronts an offender with a weapon and there's a standoff?---Yes.

And that ultimately results some seconds later in a shooting?---Yes.

And the police officer right from the outset recognises this is problematic. You understand that?---Yes.

Yes. In this situation what we see is ten seconds of no expression of concern whatsoever and then within a very short period of time immediate access to the most lethal option available?---Well it went from sort of zero to all hell breaking loose, you know, in less than ten seconds. I mean suddenly Mr Walker made the choice to use the weapon that presumably he'd secreted and had ready to launch that attack. And so you know, I mean thankfully Constable Rolfe had the wherewithal I think to look like he sort of slightly deflected that. He was still stabbed, as we're all aware, but you know, a couple of inches the other way that could have, you know, been his carotid artery or whatever. So it was just, you know, extremely dynamic, extremely dangerous. And yes, very, very quick.

Isn't it the case that the circumstances that we see here are equally consistent with an instinctive reaction from Constable Rolfe rather than the assess and reassess application of your program?---No. I think he's -- I think he's -- he's -- you know, in his mind he's obviously gone through that constant assessment process and that can happen extremely, extremely quickly.

Well - - -?---And I think that's exactly what he's done.

He hasn't given inquest in this inquest and hopefully he will soon. But you say to use your process of assess and reassess he would have had to have gone through that process in those few seconds?---Yes. So it's a constant assessment and reassessment of the threat, of what you're perceiving through your senses. You know, what you're seeing, what you're hearing, you know, did he feel that -- that -- that edged weapon strike him, I'm not sure.

You see the problem is - - -?---But yeah, he -- he - - -

Just one last question, the problem is, in the first 10ten seconds when he realises that this is an extremely dangerous person, he doesn't respond at all apparent concern about being in close proximity to this extremely dangerous person.

MR OFFICER: Your Honour, I object before the question is answered, Constable Rolfe's trial evidence is on the brief. It explains what he might have been thinking or doing in that in a sentence.

MR MULLINS: Your Honour may not accept the trial evidence.

MR OFFICER: The fact he hasn't given evidence in this inquest doesn't matter.

MR MULLINS: Your Honour may not accept the trial evidence and your Honour may reject that evidence. I'm putting a proposition to this witness on the basis that, in due course - - -

THE CORONER: On the basis of what can be seen on the - - -

MR MULLINS: Correct.

THE CORONER: - - - footage which is the basis of his opinion.

MR MULLINS: Correct, your Honour, yes.

MR OFFICER: Well, your Honour, that (inaudible) and body-worn video, as we know, has its limitations.

MR MULLINS: This witness can express an opinion based upon what he's seen. He's already done that. And I am dividing those two components into what Constable Rolfe actually believed, which is a matter for his evidence, and then what can be discerned from the body-worn video footage that this witness has been talking about. I've forgotten the question now.

THE CORONER: He didn't exhibit on the body-worn video any concern, apparent concern for his safety once he identified who it was that was standing in front of him.

MR MULLINS: Correct. And it may be that the way your Honour framed it is better than the way I framed it.

THE CORONER: No, I think you're just being polite.

MR MULLINS: No, from the body-worn video that you saw, that doesn't demonstrate any concerns by Constable Rolfe after he discovered that he was dealing with this extremely dangerous and violent offender?---Yeah, well I mean, at that point of course, there was no visible weapon available to Mr Walker, as far as Constable Rolfe was aware. So, it seemed to me that as soon as the identification – as soon as he'd satisfied himself that this in fact was not Vernon Dixon, he then moved to a position where he wanted to apply handcuffs and take Mr Walker under arrest.

Thank you, your Honour, nothing further?---But before he had the chance to do that – so that was – you know, that was within that 10 seconds, but it was then that Mr Walker made his own choice.

Thank you, Mr McDevitt.

THE CORONER: Yes, Mr Murphy.

XXN BY MR MURPHY:

MR MURPHY: Mr McDevitt, can you see and hear me?---Yes.

My name is Murphy and I'm one of the lawyers for the North Australia Aboriginal Justice Agency, which is Aboriginal Legal Aid in the Northern Territory?---Yes.

I'll just – and the structure of my questioning will be that I'll ask a few general questions about really the nature of your opinion, then I'll ask you some questions about your experience, and then I'll ask you some questions about particular

opinions you offered at the trial. So first – and this is sort of an abstract question, but your evidence at trial was that Constable Rolfe's use of a firearm to shoot Kumanjayi Walker on 9 November 2019 was necessary, appropriate and proportionate. That's right?---That's correct.

And do you agree that in determining whether something is necessary, appropriate and proportionate, it depends on what you know about the circumstances surrounding the event. Would you agree with that?---Yes, that's right.

Would you also agree that when you're assessing whether a person's conduct is necessary, appropriate and proportionate, it depends on how you define the conduct, as in how narrowly or widely you've set your lens. So I'll give you an example of that and then ask you whether you agree. You've got a police officer, imagine, who goes up to a civilian and pushes a civilian without provocation; just walks up to them on the street and pushes them. The civilian then reacts negatively, gets into an argument, pulls out a knife and the police officer ends up tasing that person. Presumably in those circumstances, if you just look at the conduct of the police officer tasing the individual in response to an edged weapon being produced upon a police officer, you might say it's reasonable or necessary, appropriate and proportionate. Is that right?---Well, yeah, I mean you can only judge the incident on the sort of – you know, the start and finish point, as you know. Is that what you're getting at?

And does it depend where you set the start and finish point of what you're assessing?---Potentially, yes.

And in terms of the very specific and really the focus of your evidence at trial, I appreciate that you did traverse the events leading up to the shooting, but the focus of your evidence and your opinion was that the three shots fired by Constable Rolfe in House 511 were necessary, appropriate and proportionate. Is that right?---That's correct. The majority of my evidence focussed on, I think it was a period of 3.1 seconds between shot one and shot three.

You weren't, as I understand it, specifically asked and nor did you specifically provide an opinion about whether all of the concatenation of events leading up to those three shots could have been done in a more appropriate way in order to avoid those three shots being fired. Is that a fair summary of what your evidence did focus on and didn't focus on?---Yeah, well sorry I haven't read my evidence recently, but primarily, it focussed on – primarily on what occurred in – at 511.

I'll just move to the second of the three topics and that's your experience in – well really, your experience and expertise, and I'll just reel a few off and then ask you if that's all correct. Your expertise and experience includes being a member of what you describe as a specialist assault team for 12 years, being trained as a sniper, being trained in chemical munitions, expertise in how to assault a terrorist stronghold, experience negotiating with warlords and foreign militia and coordinating with the AFP's investigating response to terrorism, people smuggling, money laundering and the like. Is that – are they all fair summaries of aspects of your

expertise and experience?---That's correct.

And this is not a criticism, I'm just trying to get clarity on this, in answer to the question from the counsel assisting earlier, I think you said your only experience in community policing in Australia is in the Australian Capital Territory. Is that right? ---That's correct.

And I know, but I think you tried to make this clear at the outset in your statement and you also said at the trial, that you don't have any experience policing in Aboriginal communities in the Northern Territory or indeed, for example, Western Australia, do you?---No, I don't.

Is it right then that you don't have any personal experience in the arrest of an Aboriginal person, is that right, in a remote community?---That's correct.

And certainly, that would mean you don't have any experience in the arrest of an Aboriginal person in a remote community who might have an intellectual disability, who might speak a language other than English. Is that correct?---That's correct.

You don't have any experience working with Aboriginal Elders in remote communities to facilitate arrests. Is that right?---That's -- not in Australia. I did a lot of that type of work in the Solomon Islands with Chiefs and Elders of various remote villages negotiating arrests of militia group members there, but no, not in Aboriginal communities.

And certainly, you wouldn't suggest that your experience negotiating for the surrender of militia groups in a foreign country is readily transposable and applicable to the context of a remote Aboriginal community in the Northern Territory, would you?---I don't think.

You don't have any personal experience utilising an Aboriginal Community Police Officer to facilitate an arrest. That's correct?---No.

And you haven't had the opportunity to work on the ground in remote Aboriginal communities in the Northern Territory and observe remote police officers, including non-Aboriginal police officers, who have skills in communication such that they are able to go a decade working on the ground in these communities, able to go a decade without withdrawing their firearm from its holster. You haven't had the opportunity to observe that - - -?---No.

- - - kind of work?---No.

I'll just now move to the third and final bit of my questions, which there's a few, but it shouldn't take less -- more than about ten minutes. It's about specific aspects of your opinions. And the first is about really the arrest attempts or the -- what became an arrest attempt on 9 November. You said earlier in response to a question I think Mr Mullins, "Four men and a dog doesn't cut it." Were you trying to say there that really the four IRT members and a dog unit, in your opinion, they weren't adequate

resources for this planned arrest?---That's correct.

And it was your view, your example, and you've said it in your first report, which you can refer to if you need to, but consideration should have been given to, for example, enhanced surveillance capacity, such as drone capability?---That's – that's – that's one of the possibilities. But the other that I actually had in mind was exactly what you just referred to, which was use of the – you know, the Aboriginal community police officers. And you know, the people there with local knowledge being utilised as well. And we didn't see that happen.

You certainly referred to trained police negotiators. You refer to them in combination with the TRG, but can I suggest to you that at no point in your written reports or trial evidence, do you ever suggest that what should have been used was Aboriginal community police officers. I suggest to you that sitting here now is the first time that you've said that that's what you were trying to get at?---No I'm just considering use of the – of the full resources that were available at the station, being available as well. But primarily my focus yes, was on the TRG. And if the TRG had have been involved, as they should have, given their general order says that any – any warrant when the arrest or search warrant, where resistance is anticipated, then use of the TRG should have been considered. I think if the TRG had have responded to that, it wouldn't have been four people and a dog.

It could potentially have been more people and more fire power, is that right? ---Potentially. It would have been – could have been more fire power, should have – could have been more or less lethal options. Could have been negotiators. Could have been the use of drone technology. Could have been a whole different strategy, with, you know, there's just waiting for a few days. Observations, that sort of thing.

But just to be clear, you thought four IRT members and a dog were inadequate, and the TRG should have been sent in to arrest this 19-year-old Aboriginal man in his community at the time of a funeral? That's your opinion?---I – I believe serious consideration should have been given to the use of the TRG, and at the very least, I believe if that were considered, you would have seen a risk assessment prepared, and you would have seen a lot more consideration go into the planning of the operation. Which would have been a much safer result for everybody involved.

You've said that you think – your opinion is that serious consideration should have been given to TRG. Can I just suggest to you, that in your written report, you've gone further and said "Should have been activated"? So you'd agree that your written opinion was not just that serious consideration should have been to TRG, but they should have been activated for this arrest?---I think they should have, because I think if serious consideration were given to use of the TRG, and if you had a look at the general order, and you saw the requirements, I think there was about five or six potential requirements, whereby TRG would be involved, and I think in this instance, you would have ticked off three or four at least, of those requirements. And I think – I think I've gone to that in my statement. I can go to it now if you want me to, I've got it - - -

No, that – that’s suffice for my purposes. I’ll just – you disagree then with evidence that the Coroner heard this morning from an emeritus professor, who’s an expert in the militarisation of police, you disagree with the opinion she gave, which is that groups like the TRG should only be used for sieges or counter-terrorism, you’d disagree with that?---I’m sorry, I didn’t – I didn’t – I didn’t hear her evidence, but you know, my history with the professional operations team is that they – they can be used for domestic purposes, where it meets certain criteria, such as you saw listed in the general order for the TRG. So where there was a high risk, domestic incident, was not a – not necessarily a terrorist incident, and don’t forget a lot of terrorist incidents, you don’t know that it’s a terrorist incident until later on, particularly if it’s a lone wolf type incident, that yes you could, and would, use all the assets available to the police service, which would have included specialist police. I don’t see why you wouldn’t do that.

You – and is the reason that you – is one of the reasons you think you need these specialist units for something like this, is that you don’t think that general duties police would have had adequate training in these sort of negotiating, or safe cordon and containment style arrest. Is that why you need to get the specialist unit in? ---Yes, potentially, and – but – but you need to realise that the specialist unit isn’t just about kicking in doors and repelling out of helicopters. I mean the specialist units generally come with the police negotiators as part and package of it. And come with all of the other skills and less than lethal options, that just aren’t available to general duties police. So because a specialist unit comes in, that doesn’t necessarily mean that you’re talking about an escalation. You may well be talking about a de-escalation, and chances are, you’ll probably end up with – with less danger to the community, and to everybody else because you have bought in the higher level of skills. The people who are trained. And are trained and practiced at dealing with these sort of events, and with offenders who are – who are high risk. So they tend to you know, do things in a more measured way, and certainly a more planned way, underpinned by a risk assessment.

Okay, so that - - - ?---So I think the protection – protection of a community is often enhanced by using specialist police, I guess is what I’m getting at.

That’s comparing the TRG to for example, the four IRT. But – and you’re saying that in fact that could have been de-escalation, but you – I don’t think you’d suggest would you, that bringing the TRG in would have been a de-escalation, or something less, than other options that were available. Such as using an Aboriginal community police officer to negotiate an arrest?---Well I think if the TRG came in – I mean if – if the TRG came in, they – they – I can’t speak for them I guess, because I don’t really know exactly how they work up there, or exactly what they have at their disposal, but my sense is, that if they were aware that the – you know, potentially the greatest source of intelligence, for example, which would have been one of their key aims, that – the key thing they would have been done would have been to try to gather as much intelligence as possible. And it would seem to me that that – most of that would probably reside with the local police officers, who had potentially dealt with – with Kumanjaya in this case, previously.

And the reason that this kind of specialist response was necessary, in your view, is because of in particular, the axe incident, from three days earlier, is that right?---Can I just have a look at my notes, your Honour?

THE CORONER: Sure.

MR MURPHY: It might – you might be assisted by page 19 of your first – of your statement, and towards the bottom of the page where you've said there was a lack of a sense of urgency?---Yeah. So on – on page 17 of my statement, where I've talked about the TRG, it says there's criteria listed to assist whether – to determine whether a situation is high risk. Which includes, and you can see there, the seriousness of the offence committed. The expressed intention of a suspect to use lethal force. And in those, I – I point out there that criteria 21.1, the BWV evidence, provided graphic evidence that a serious offence had been committed by Mr Walker. It was also a clear demonstration of his propensity for violence as per 21.4.2. And further, he had a criminal history which included convictions for violent related offences and I list several there, including assault police. And in my opinion, I've said this could be considered a history of violence as per criteria 21 – well I've put 4.2 there but it's 4.1. So you can see there there's at least three of those reasonable grounds which should be considered as to whether or not the TRG would be involved. And if it would be fair for the TRG if they were – if they were notified about this, to probably look to that to make a decision as to whether or not they thought it was something that they should be involved in.

In terms of the level of threat or dangerousness that Kumanjayi Walker posed, this inquest has heard evidence from one of the two police officers at the axe incident – well relevantly heard evidence from one of the two police officers – who said that in his view – and I'm paraphrasing – that Kumanjayi Walker's presentation of the axe on that occasion had a cultural dimension to it in the sense that he interpreted, at least the police officer, that it might be more of a sort of show of force that in the police officer's view might have reflected an aspect of Walpiri culture rather than indicative necessarily of a preparedness to use that weapon on the police officers that were present. I appreciate you weren't here to hear that evidence, but assuming that I've accurately summarised it, would it affect your opinion of the dangerousness or the level of dangerousness that Kumanjayi Walker posed if it was in fact correct that part of that axe incident was just a show of force?---Well I – I've sort of – I'm aware of the – that sort of narrative that you're presenting and I don't – I'm not aware of, you know, Walpiri culture, so I'm at a loss as to the extent to which it could be sure that that was the case. And it worries me that maybe we couldn't be sure of that. And I do remember reading that when that incident occurred and I think there was several people in the house and I think one of them, it might have been Kumanjayi's grandmother, had been yelling at him to drop it or don't do it or leave it, it's going to get you in trouble or whatever, so you know, another theory might be that he may have actually been persuaded by that yelling of others to say no, don't do this, you're going to get into trouble. Or maybe he – maybe he fully did intend to use the axe to – not necessarily to strike them, but to assist in getting out of that building and by running at them with it, you know, with an intention to either they – either they're scared enough or move or whatever away from the doorway or he hits

them if he needs to, if he was determined to get out of that door. So I do – I understand what you're saying in relation to the possibility that it was, I don't know, like a show of force which was a Walpiri thing. But it would be a, you know, quite frankly, you would have to be really, really solid as to that's exactly what this is about if you were to let somebody run at you with an edged weapon like that in close proximity. I mean, that would be a big call.

Your Honour, I've probably got about five minutes left. Is your Honour content to sit on?

THE CORONER: Sure.

MR MURPHY: The last two things I'd like to ask you about is the entry into House 577, that's the first house and then I'll ask you about the shots in the second house. So it was your view and your evidence that Constable Rolfe's decision to enter House 577 was sound, that's correct?---Yes, that's correct.

And that was even though police had been told by a child that Kumanjayi Walker was not in the house, you still considered it sound for them to enter that house? ---Well you've got to be careful because I mean that – that evidence is from a child and it's uncorroborated and it's single source. I would – I personally wouldn't have moved beyond that house until I'd checked it, given that that was the house that Kumanjayi Walker was in three days before. I would have checked that house before I moved on. That's my personal view.

And you said that on checking the house, it was appropriate and tactically wise for Constable Rolfe to have partially disengaged his holster, is that correct?---I would have, yes.

And in fact your only criticism of Constable Rolfe in entering that house is that he, quote, "Should have had the firearm out of the holster ready to deploy". End quote. That's your opinion?---Yes.

And that's even - - -?---If anything – if I had any criticism, it would have been that, in terms of being prepared, in terms of knowing what had happened in House 577 and the likelihood that if Kumanjayi were in there, and again decided to take up arms, then – just because you – just because you unholster a firearm does not mean you're going to use it.

But you've got to be ready - - -?---It is – it is a show of force, absolutely and it's a very strong deterrent. It's a much stronger deterrent when it's out than when it's in the holster.

And you've got to be ready to use it if you withdraw it from the holster, that's correct?---You would have to be prepared to use it. It doesn't mean you have to use it.

No, I understand that distinction. So your evidence is that it was appropriate to enter the house notwithstanding a child said Kumanjayi Walker wasn't in there and it was appropriate to, not just have the holster partially disengaged, but to have the gun out and ready to deploy, that's right?---You said notwithstanding Kumanjayi Walker wasn't there. That wasn't known to Constable Rolfe at that point. All that he had was a child saying that Kumanjayi wasn't there. Is that right?

Yes, that's right. And all of that was appropriate, that is entering the house with a firearm drawn, notwithstanding that there was a 10- or 12-year-old child present in that house, that's your opinion?---Yes.

And in fact at trial you said, quote, "I've gone into thousands of houses with far more fire power than what Mr Rolfe had, which have had children inside of them". Do you remember giving that evidence at trial?---Well that's correct. I mean I think the statistics are something like there's 400 houses for every thousand Australians across the country. So chances are if you're going to go into a house you're going to find children there, more than likely.

And that didn't change your opinion as to the appropriateness of having a gun drawn and ready to fire?---No. But – yeah. You're trusting that – you trust in the training of police officers in relation to how they move – how they move about with a firearm and whether or not that firearm is utilised. But it's unfortunate and it's distressing that it's a reality that on many occasions police are required in the execution of warrants and so on, to actually enter houses with weapons drawn.

You've said trust in the training of the police officers. Is your assessments of the appropriateness of Constable Rolfe going in there, as you say he should, with a gun drawn, does that take into account how that might affect the community trust of police in that community?---I think it – I think it – I think it's fair to say that, you know, that sort of activity, you don't take it lightly. I mean it obviously would have been distressing for everybody involved. But I don't think it means that it's not necessary or justified in certain instances.

And when you say you take into account the effect on the community, certainly you'd agree that one big factor would have to be how that 10-year-old kid is ever going to have a positive relationship with police if they've witnessed a police officer roaming through their house with a gun drawn. You'd agree that's got to be a relevant consideration?---Well it could be. I mean I'm not sure exactly what happened as, you know, exactly where the – the child had been in the house and to what extent, you know, he – he saw where the weapon was actually being pointed at any point in time or I mean he – I don't – I don't know exact movements within each room of the house, for example. It may have been as simple as Constable Rolfe having the weapon down and glancing in and seeing a child, and then moving on. I don't – I don't know. I can't recall his exact movements in the house. I don't think – I'm not sure, but I don't think it's alleged that he went in and bailed up a child by you know, pointing a firearm at the child or anything like that.

Okay, my last questions are just about the shots that Constable Rolfe fired in the next house he went to, 511. You say that he acted appropriately in drawing his firearm and firing those shots, that's correct?---Yes.

And part of why you say that, and please refer to page 55 of your first report if you need to, is that Kumanjaya Walker had decided to "Initiate a lethal attack upon the two police officers." That's – that's part of the reason that it was – indeed the reason it was appropriate for Constable Rolfe to draw his gun and fire those three shots? ---That's correct. He – there wasn't just the threat of a – of an edged weapon, it had actually been used upon him.

But can I – can I just say, you actually say – you go up a little bit further, not just the presence of the edged weapon, that you say in – at page 55 of your report, that it was Kumanjaya Walker's decision to initiate a lethal attack. You're evidence and your opinion was that Kumanjaya Walker's intent was lethal, that's right?---Yes.

That he was - - - ?---It certainly – you could certainly consider that. I mean why – why else – why else would you launch an attack like that towards the neck region of a police officer.

But without necessarily accepting it's to the neck region, when you say you could consider that, to you the intent was clear, and in fact you said, in your statement, "Mr Walker's intent was clear, and was voiced by him, even after he'd been shot three times, with the explanation 'I'm going to kill you,' and then there's inaudible, possibly nod." That confirmed to you, Kumanjaya Walker's intention to kill those police officers, is that right?---That was part of it, yes.

Are you aware that in Aboriginal English the word "kill" means something to regular English, and in fact it can mean just simply hit or injure, rather than end a person's life. Are you aware of that?---It's – yeah, look that's – that's quite possible, and it's – you know, it's common in Solomon Islands Pidgin as well for somebody to say kill when they mean assault.

But it doesn't appear that you factored that into your opinion there, would you agree with that?---Well it – it seemed to me that the – those words, coupled with the actual launching of the attack, seemed to me to make it pretty clear, that in that instance, the word kill meant kill.

No further questions, your Honour, I apologise that I went so much over.

THE CORONER: No I don't think you did go over time. I don't know what limit had been set for you.

But can I just clarify something, Mr McDevitt. You've talked about the entry into House 577, and your view that, you know, possibly it might even have been justified to have a weapon drawn, I – I'm assuming that, from your point of view, going in to 577, possibly justifying a weapon being drawn, was on the basis that the police were

entering that house in order to affect an arrest, if he was present?---I think that's correct, your Honour.

And the purpose of entry was in pursuit of an arrest?---That's correct.

We might just break for the afternoon adjournment.

WITNESS WITHDREW

ADJOURNED

RESUMED

BEN MCDEVITT:

XXN BY MR O'BRIEN:

MR O'BRIEN: Mr McDevitt, my name is Mr O'Brien and I appear for the Parumpara Committee, which is a committee of leaders from Yuendumu formed in the wake of this shooting to advocate the justice reforms. Do you understand that?---Yes.

I just wanted to pick up on some of the things that you were just saying to Mr Murphy. Now as I understood your evidence you said that four IRT members, including – and additionally a dog unit, was an inadequate response to the threat posed by Kumanjayi Walker. Did I understand that correct?---Yes, that's correct. And the main reason for that was the response was that there was – it seemed to me to just be guesswork or something that Sergeant Frost hadn't asked for. There was no risk assessment.

And I understood your personal recommendations would have been to involve the TRG and – for the IRT who were on the ground should have taken measures such as had their firearms drawn when they entered the house, correct?---I'm sorry, I just missed the first part of your question.

I'll take it in parts, Mr McDevitt. One of the things that you suggested was to use the TRG to respond to the threat posed by Mr Walker?---I think the TRG should have been consulted at the very least and that then would have necessitated some input to them – by them. But as I said earlier, I think once they were consulted and looked at the risk, I suspect that they probably would have thought it was appropriate for the TRG to deploy.

And another thing that you recommended, if I understood correctly, was that when the officers entered House 557, they ought to have had their firearms actually drawn when they entered the house?---Well what I – what I was saying was that I think Sergeant Barram had – had a criticism that he felt it was not appropriate that the holster had been you know, just one of the safety mechanisms on the holster had been released. So I don't think the weapon was actually drawn. And I said, well you know, as an instructor to tell the truth, the – you know, the way – the criticism I would have had would have been probably the other way. Not that it was – you know, that perhaps it was even a higher level, which may have justified actually having the gun out of the holster. So that was the point I was making at the trial.

Would you accept that if they went into the house with their firearms drawn, it limits the options that they – that those police officers have for non-lethal use of force, doesn't it?---It – well you can only handle one – you can only handle one thing at a time, you know, that's – that's the reality.

And one of the reasons that Senior Sergeant Barram gave for recommending that the firearm was secured with all of the safety mechanisms in play, was because it

was the safest way to carry the firearm, while allowing that police officer access to non-lethal methods of engagement, such as a Taser or a spray, or a hands-on arrest?---Yeah will it depends on – it depends on how you went in. You wouldn't go in with two Tasers for example, drawn. Because then you had the situation where you don't have the option of lethal force.

Mr McDevitt, I just want to put a few propositions to you about the approach that you seem to be recommending ought to have been adopted in this case. And I want you to bear in mind that we're talking about a 19-year-old cognitively impaired Aboriginal man in a remote community, attending his grandfather's funeral. We're not talking about a militia leader hiding out in a property or something like that. You understand?---I don't think we're talking – I don't think you, you know, the inference you're making is – is not what I'm actually saying. What I'm actually saying is you are looking for a person who is wanted on warrant. You are looking for a person who has committed a serious and significant assault on two officers, three days before. That's what – that was my thinking.

That's right, and I accept that, and accept the axe incident three days before, but it's also - - - ?---Yeah so someone with a – someone with a propensity to use violence and take up weapons, yes.

Well you use the word “propensity” Mr McDevitt. Kumanjaya Walker didn't have – other than that incident on 6 November, did not have a history of violence in any way did he?---I think I – I think – I don't think that's correct. I think there's actually, in his criminal history a number of assaults, including assaults against police, is that correct?

I won't push the matter, Mr McDevitt. What I would suggest to you though, is the approach that you have suggested of bringing in the TRG, elite para-military unit, and going into the property with your gun drawn, shows a shocking disconnect from community expectations for how policing should be done?---The point – I made the point earlier that because you – simply because you utilise the TRG, that does not mean that there is going to be an escalation of force. What it means is you're going to have far more assets at your disposal, and the chances of a professional and peaceful resolution to an incident like this are actually enhanced, through using specialist police. That's the – that's the point I'm making, that, you know, it necessitated the additional skills. It may well have been a deployment and you know, simply observations, with a view to using TRG specialists in the field, to then actually make the arrest when Kumanjaya Walker was actually not in the house at all. Or it may have involved options for using of a police negotiator, who would be deployed with the TRG. I'm just saying that without using the TRG, you actually limit your options.

I want to suggest to you that the recommendation that the police officers ought to have their firearms drawn when they went into House 577, shows an alarming preference for an excessive show of force?---Sorry a - - -?

A preference for a show of force?---Well it – it would be – it would be a show of force, if a – if a weapon was drawn. I accept that.

And I - - - ?---But what you're dealing with here is the same house where two officers went to three days previously, where not long after they arrived at the house, they were subject of an attack by Mr Walker. So I think – I think with that knowledge in mind, you would be – need to be prepared, and that's why I said I think – I think you would just – you would be justified in actually entering with a firearm out of the holster.

What I would suggest, Mr McDevitt, respectfully on behalf of my clients, is that an approach should have been adopted that involved community liaison, engagement with the family, rather than storming the house at all?---Yep, I – I tend to agree with that. I'm not disagreeing – I'm not disagreeing with that. But this is – and this is the issues that I have with the whole approach to why they were at 577 in the first place, and why it wasn't better managed from the start, with proper operational plans, and you know, I tend to agree with what you're saying about the use of community police officers, and that sort of thing. And you know, in particular, that the use of the intelligence aspects that you could gain from employing those people.

As I understood your evidence, you seem to lay the blame for those things, lack of adequate planning, how this was carried out on 9 November, to the Northern Territory Police Force executive. Do you also attribute responsibility to those shortcomings to the IRT members who actually responded?---Yes I – yes I do, but I believe – I believe that, as I said earlier, they – they should have had – you know, very clear demarcation around their roles and responsibilities, around their leadership. There should have been a very, very clear mission statement. There should have been actions on, you know all those sorts of things, and there should have been a proper risk assessment. So yes, I – you know, I attribute to them, you know, as I said at the trial, you know, some of the tactical failures that they made. But you know, quite frankly, as I said, I – I just don't think they should have been there in the first place. And if it'd been properly managed at an executive level, they probably wouldn't have been.

There are a number of other aspects around how the – those IRT members behaved in the community that were of great concern to my clients, the things that I'm talking about is the open carry of long arm semi-automatic rifles around the community. The fact that fences were jumped to enter properties. The fact that community members were spoken to inappropriately in language of – that could be construed as language of revenge, I'm not – I'm talking about the interaction with Constable Eberl and a member of the community. Are you aware of those features of the way the IRT behaved, and can we take it that you are also critical of those – those actions? ---Yes of – of some of those things I am. I mean I understand you know, in relation to the – to the long arm, for example, being utilised, I accept that that may have caused some – brought about some apprehension. But I mean, frankly, from my perspective, I tend to look at things more from a tactical perspective, and I think it was a mistake from that perspective as well. Because, you know, if you're carrying a long arm, you can't use a long arm to go into a house. It's just totally unsuitable

weapon for that sort of operation. So you know, in my view, the taking of – taking the long arms to Yuendumu, I believe was a sound decision. I had no issue with that. Because if, for example, a situation arose where Mr Walker had managed to gain access to a long arm himself, and I'm not saying that he ever thought to do that or anything, but I do understand at least one witness said there are long arms available in that community, then I – I see the sense

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because if, for example, a situation arose where Mr Walker had managed to gain access to a longarm himself, and I'm not saying that he ever sought to do that or anything, but I do understand at least one witness said there are longarms available in that community, then I see the sense in taking a longarm with the IRT, but my personal view is that once you got there to that house, and I'm looking around, I would probably think the wiser decision would have been to probably leave that in the police vehicle. So, that's what I think about the longarm.

And the other aspects of how the IRT behaved in jumping fences, the way that they were speaking to community members, did that – are you critical of those features as well?---Well, I'm not – you know, I mean, I'm sorry but I'm ignorant in – you know, in terms of, you know, what might be seen to be respectful or disrespectful. When I saw them approaching the house, I didn't have any particular issue myself or sort of, you know, with the language that was used in talking to the community, other than one aspect which was in relation to – I think there was a comment by one of the officers about, you shouldn't run at officers with an axe, or something like that. And I thought that was not a useful comment and inappropriate and not helpful. But other than that, the way they spoke to the community, it didn't seem to me - - -

That's the incident that I was referring to. Thank you, Mr McDevitt?---Right, yeah. Other than that, I didn't think it was particularly disrespectful, other than that. The way that they sort of spoke to community members there. I don't – jumping the fence, I don't really know. I'm assuming that was probably done from a - more of a tactical perspective. I didn't have a really good view of the house from that angle and perhaps they were looking to be able to have better visual coverage of two sides of the house or something. I'm not sure.

Those are my questions. Thank you, your Honour.

MR OFFICER: Hang on, just for my friend's benefit, the assault of a member of the police force is at page 315 of Kumanjayi Walker's information for courts (inaudible).

THE CORONER: Is that an information?

MR OFFICER: Information for courts.

THE CORONER: Are you sure that it's the information? I just want to doublecheck

that it's not the other document that we - - -

MR OFFICER: No, information for courts which I'm referring to, MS1 of the small branch (inaudible) of the first affidavit. To assist, in the Northern Territory, there are two documents commonly tendered; an information for courts and an antecedents.

THE CORONER: And this is the information?

MR OFFICER: This is the information for courts.

THE CORONER: Thank you. Any other questions?

Dr Freckelton.

DR FRECKELTON: Yes, certainly, your Honour.

XXN BY DR FRECKELTON:

DR FRECKELTON: Excuse me for a moment. Mr McDevitt, my name is Freckelton, and I appear for the Northern Territory Police Force and Ms Burnard? ---Yes, sir.

So you've identified that, on you're analysis, the incident with the axe on 6 November should have been very important in the formulation of the strategy to apprehend Kumanjaya. Is that right?---Yes, that's correct.

Can I suggest to you that there most assuredly were lessons that should have been learned from it, and a key one was to try to avoid endeavouring to arrest him during daylight. Do you agree with that?---Yeah, well I suppose that would depend on what plan you put together. You may have arrested him in daylight, but perhaps when he was outside of the house, do you know what I mean.

Yes?---I'm just, you know - - -

Yes. So one option would be to avoid arresting him during daylight. But if that was to take place, there would need to be cordoning and containing and staying away from close range. Is that right?---If you were going to do it in daylight?

Yes?---Yeah, quite possibly. Yeah, quite possibly you would sort of put – you know, put surveillance in and wait until he was out of the premises and less likely to have access to a weapon.

But the key would be not to repeat the circumstances of 6 November?---Yeah, I – well - well I mean that clearly didn't work. It wasn't successful.

No, it didn't work and raised the potential for real risk, didn't it, if there were to be a repetition of the mode of attempted apprehension that was tried on the 6th of the 11th?---Quite possibly.

Yes. But a lot of this depends on how one interprets what happened on 6 November, doesn't it?---Yes, that's correct.

All right. I'm just going to read to you three of four passages from evidence given before her Honour and also at trial. First of all, Mr Hand, who gave evidence here on 19 September, transcript page 650, he was one of the two members at – on 6 November, Mr McDevitt, all right?---Yes.

And he said, "He had plenty of opportunity to hit us with the axe", he's referring to Kumanjayi,

"But as I said, that's a period where, although initially I thought to myself, I might be in a bit of trouble, that was a split second thought. Then I knew he wasn't going to use it on us and I moved out of the way and gave him a path to go to the door."

Now, that's the perception of Mr Hand who was there. Is that an important insight for then to be factored into the evaluation of the 6 November incident?---Well, that's his – you know, I mean, we're hearing that, you know, his words about how he perceived it.

Yes?---And what he thought may or may not have happened, yep.

Okay. I'll read you something else that Mr Hand said at trial at page – sorry, the previous one was before you, your Honour. This is at trial page 82 on 9 February, "I don't think he wanted to chop us up. He just wanted to escape. He had plenty of opportunity to assault us and he didn't. He ran out of the house because he didn't want to be arrested." Do you say the same about that, that's his perception of it? ---That's his perception of it. But as I said earlier, there are – you know, there are other considerations that, you know, could be relevant. For example, I mentioned about other people in the house saying, don't do it, don't do it, drop it, or whatever - - -

Yes?--- - - - to Mr Walker, and that may have been why he decided not to use it. I don't know.

Well, let's go to the other constable, Lanyon Smith at trial page 112, he was asked about this and he said,

"Everything was processing extremely fast in a short period. I had adrenaline going through me. But I didn't feel that he was going to hurt me. It was more of an intimidation to get out of the room."

And he was asked why he thought that and he said,

"I knew him, he knew me. Kumanjayi, being a Warlpiri man, it was more of a show to his partner who was in the room with his family. He just wanted to get

away.”

Now, that’s the perception of another man who was actually there at the time. Would you factor that in as an important component of information to evaluate what actually took place at the time?---Well, quite possibly. I mean, you’ve got two live instances there. You’ve got another – I think there was a conversation with Sergeant Frost where the grandmother, I think it was, said, I was really worried about your guys, or words to that effect.

Yes. She wasn’t there?---And you know, if it was – well I don’t know, but if it was all about show and some worry thing about making a show, wouldn’t she have known that there wasn’t a real threat to those guys? So, why would she say she was really worried about them?

Well, she might say that because she was trying to impress upon family members the importance of their insisting to get him to hand himself in, Mr McDevitt. Do you accept that?---Well, she may have done, if they were present while she was saying it to Sergeant Frost.

But what I’ve done is to quote you three passages, and there are more but I won’t go into them because time is passing, where the two members involved gave an account of their perception that there were reasons, other than a homicidal intention on the part of Kumanjaya Walker, for the way he behaved with the axe. Do you acknowledge that that is important information about how you interpret and apply the lessons to be learned from 6 November?---I would accept that that’s the impression that they’ve relayed.

All right. Because you’ve talked in terms of a propensity for violence, we’ve just been told that there was an incident the year before when he resisted arrest and there was a minor altercation with no weapon with police, and then there was this one. And you’ve spoken about a propensity to assault police, haven’t you?---Well, I understand what you’re saying about the impressions that the police said after the fact, that they had both decided that somebody waving an axe and running at them with an axe, albeit going past them and through the door, that they decided that in hindsight, presumably or possibly at the time, that – because this would have happened extremely quickly – that they may have said well yeah, you know, he obviously didn’t use the axe against them, so they may have thought that was consistent with that he never had any intention of using it against them.

What did he do with the axe after he’d passed the second police officer, Mr McDevitt?---My understanding is he dropped it and ran away.

Dropped it within about a metre of going out the door, didn’t he?---Yes, that’s correct.

At any rate, it was a troubling incident which meant that lessons needed to be learned from it. We can agree on that?---It was a significantly troubling incident, in my view. Significant enough for Sergeant Frost to mark it as management significant.

And that meant - - -?---(inaudible).

- - - that management – and I suggest to you that that meant that management needed to know that it had happened. Do you accept that or do you have a different view of the processes in the Northern Territory Police?---That's correct, that management needed to know about this because it was a significant incident.

And also that Sergeant Frost properly put out an alert in relation to the man, that he might be dangerous?---That's correct. I think it actually went before – beyond that, that he might be dangerous.

Might be violent?---I have – I don't have the exact wording in front of me.

At any rate, she did the right thing in putting out alerts and a clear message for anyone who had anything to do with Kumanjayi so that they would be aware of those issues, correct?---That's correct.

Now you're aware that at Yuendumu there were a range of things that occupied police in the days after 6 March – I beg your pardon, 6 November?---Yes.

And are you aware of how many times police spoke to the family on the 6th and the 7th in an effort to endeavour to arrange for Kumanjayi to hand himself in with the encouragement and assistance of his family?---That's correct.

How many times did that happen, Mr McDevitt?---I think it happened twice.

If I say to you it was three times. Once with the two officers involved, later in the day with Sergeant Frost and then again the next morning with an ACPO. Does that refresh your memory?---Yes, that's correct.

Now there was a funeral which was to take place involving Kumanjayi's grandfather, is that right?---As I understand it there was a funeral. I think originally it was – I think the day was originally to be the Friday.

That's right?---Is that right?

But it was - - -?---Then it was - - -

- - - postponed to (inaudible). Yes. And as it turned out it went to the Saturday?
---Yes.

And Kumanjayi in fact had breached the terms of his suspended sentence and taken himself to Yuendumu, the inference being that he really wanted to attend the funeral?---Yeah, I'm not sure as to exactly why. If you say that the evidence is that he did that in order to go to the funeral, then I'll accept it. But if that's the case.

And the officers or Sergeant Frost, extended an opportunity for him to remain at large and to attend the funeral on the basis of his needing to hand himself in after the funeral. Do you accept that as a reasonable approach to dealing with the issue? ---Was that on the – was that on the – you talked about the three efforts to get him to hand himself in. I think the first one was he had to come in two hours and there's no mention of the funeral.

That's right?---That didn't happen.

That was the first message on the Wednesday night. Then it was a further discussion on the Wednesday night and then there was another discussion on the Thursday?---Right.

And on those two or three occasions what was said that he needed to hand himself in after the funeral. Now do you accept that that is a reasonable exercise of constabulary discretion taking into account the cultural issues involved in a young man wanted to attend his grandfather's funeral?---I do, Mr Freckelton. I think I do accept that, but I'll just make the point that I – I think from a policing perspective it puts police decision makers in a very difficult decision. Because as I understand it, when somebody is wanted on warrants, which he was, then there's not much in the way of discretion. I mean that warrant is commanding them to take them into custody, as far as I know, as soon as practicable and that you know, the execution of a warrant should not be delayed. So I'm not arguing with you, I actually agree with you. But I'm just saying that inconsistency between what's written in the general order and trying to apply the discretion that you're talking about, which I think is reasonable, I'm just saying that creates a real tension in my mind for police decision makers and that's the sort of thing that needs to be addressed.

Well that's – so that's the word of the Northern Territory, Mr McDevitt, where respect has to be given to Aboriginal customary practices and values and community expectations. Do you accept that?---Yes, I'm assuming there's some – something written somewhere that says that particular aspect of that general order, there is – is tempered by discretion in these cases or something like that.

No, there's nothing written, but there are things such as humanity, compassion and flexibility, Mr McDevitt. Do you agree with that?---Well so – well as long as everybody knows that it – a breach of a general order and such is going to be accepted, because that's what you're – that's what you're saying. I mean you can't pick and choose which general orders you're going to enforce and which you aren't. If that's – my only point is there is a tension there that needs to be addressed, that's all. It could probably be done with some careful wording.

I think, your Honour, I'm addressing this to you and counsel assisting. Are we to understand that we must finish by 4.30 on the dot? I'll adjust my questions accordingly.

MR COLERIDGE: That's not a requirement I was given by the witness. I don't know if there's a court staff issue.

THE CORONER: No, no. there – the court can't sit any longer today. So we have to finish today at 4.30. However, I don't know whether Mr McDevitt is available, for example, tomorrow.

MR COLERIDGE: He's not available for the rest of the week?---I'm sorry, your Honour.

DR FRECKELTON: I've got one question (inaudible).

THE CORONER: No, no issue, Mr McDevitt. Yes, so we do have to finish by 4.30.

DR FRECKELTON: Thank you. Could exhibit 14 be shown to all of us please.

Sir, I'm putting up on the screen the plan which was generated by Sergeant Frost and shown and authorised by Superintendent Nobbs. I think you've seen this, have you not?---Yes, yes.

Now you make the point that it was emailed to persons while they were enroute from Alice Springs to Yuendumu, yes?---Yes.

Now that plan makes it apparent, as I suggest to you, the record of conversations between Superintendent Nobbs and Acting Assistant Commissioner Wurst, that there was more than one thing to be done and that included the arrest of the offender but also the provision of a presence of armed police to uphold law and order in the community and provide support to local members. Do you see that? Just above (inaudible)?---Yes.

Yes?---Yes, that's correct.

So a dual propose exercise. Kumanjayi needed to be taken into custody but there were other things that needed to be done, the shadow of the funeral on – while the members were in Yuendumu. Yes?---Yes, that's correct. The only point I'd make is that it's not clear, you know, it should be a lot clearer than that. I mean you can assume the list of tasks, I think they're listed in order there. One, arrest Walker, and two, local presence. So is that the mission statement in priority order or not. Because there seems to be some confusion over it. That's one of the issues I had with the plan.

Right.

THE CORONER: We've got until 4.40.

DR FRECKELTON: Thank you, your Honour.

Perhaps it's an issue of expectations and culture, this wasn't the kind of a plan that would be generated by the TRG in the Northern Territory and no doubt your equivalent in the Australian Federal Police. It was a rough and ready plan of a sort

that often wasn't generated at all by the IRT. Do you accept that that – that this is not a fully-fledged wholly inclusive plan, but a general guideline as to what Sergeant Frost and Superintendent Nobbs wanted to take place?---Yes.

Because there are, in different scenarios, and different context, there are different categories of plans. And this isn't a TRG quality plan?---No well it's not – well I don't want to appear – yeah it's not – not a quality plan in any extent to my - - -

But the essence of it is clear enough, in that there were two tasks. And there's a – you agree with that?---Yes.

And the – and there's a bit of a summary of what occurred on 6 November, to alert the – the IRT members, and the dog man, Donaldson, to what had happened then, so that they could factor that information into how they executed this plan. Is that right?---Yes.

Okay, just scrolling down, and avoiding the photographs if you could please, thank you. That's perfect, thank you.

All right, and one can see there the members who were to participate from the IRT and the dog unit, but also can you see that there's reference to local members, Alefaio and Frost. But - - - ?---Yes.

- - - but Hand would remain separate, because he'd been involved in the 6 November exercise, is that right?---Yes.

Now, Alefaio is the local member, will you take that from me?---Yes.

And a number of people had arrested Kumanjayi because he had been arrested quite a few times. You're aware of that?---Yes.

And – and by and large, the challenge in arresting Kumanjayi presented was that given a chance he'd run away?---Yes.

Okay. But you would accept the proposition, I take it, that having a local person who could recognise him, would be a useful aspect of putting that plan into action? ---Absolutely critical in my view.

Okay, and also another benefit of that would be having a person there who he knew, whether it was an ACPO, or whether it was a local member, who – who he had a reasonably positive relationship with previously?---Fantastic asset.

Okay, so that's a key component in this plan that you can identify, in that it could assist identification, and play a role in defusing, or de-escalating any tensions which might otherwise arise?---Yes.

And – and you would say, would you not, that execution of this plan should involve the archetypal function of the IRT in cordoning and containing?---Possibly, I mean

this is – this is the problem, because without a clearly identified resources, then it's – you know, we – you say cordon and contain, but to cordon and contain something properly, you know, you need enough people to form an inner cordon and outer cordon, and you need to know where you're actually going. In this case I think there's five houses listed, and one of them's not even a house that was on the warrant.

Yes. Well there are only so many resources, even if there's IRT assistance, that can feasibly be deployed to apprehending one man in a remote community. Would you accept that?---Yes.

And sometimes you just have to make do, and do the best you can - - - ?---Well you - - -

- - - thinking strategically and taking into account risks?---You – you do, but – but the problem is, you start to rule out options like a realistic cordon and containment option, when you've got five houses of interest, and four people and a dog.

Yes - - - ?---So you don't know which house he's in. So it's – I mean it's easy to say cordon and contain, but you know, there's a fair bit involved in actually doing that properly.

Yes?---And the reason you put the cordon in, is to then do something, like send in negotiators, or send in an extraction team, or send in your crime scene people, or whatever it is you're going to do. So cordon and contain actually takes a lot of thinking, and a lot of planning and a bit of work and resources.

Well there's no doubt that there needed to be planning about exactly how this arrest was going to take place. Can we agree on that?---Absolutely.

And the – the essence of this plan, as it is written, was that the – the members should meet at 5 o'clock on the Saturday morning, and thereafter on the – beg your pardon, on the Sunday morning. And thereafter, if necessary, on the Monday morning, with the presence of a local member. Do you agree with that?---Yes I do.

You can see that on plan day one?---It does say – it does say they're going to meet at 5 am, but the problem is, they don't know where Kumanjayi Walker was. There's five houses listed. So what are they going to do? Go and knock on all the doors, or try to cordon all those houses, or – how's that going to work?

Well I suggest to you you've given the answer to that already yourself, Mr McDervitt, they – they knew that Kumanjayi's girlfriend lived at 577, correct?---I think that's right, yep.

He'd been arrested there before?---Yes.

An attempt had been made to arrest him and he'd been there, just three days before, on the 6th?---Yes.

So the likelihood was that he was going to be there, although there were other places where he might be, and those other houses were listed, with which he had an association?---Some of them – some of them were listed, not 511, the one on the warrant, and the one where he actually was, but - - -

So do you accept this, that it was a reasonable approach to have anticipated that most likely he would be at 577, although that was no sure thing?---That – that's right. You don't know exactly which house he was going to be at, but 577 was probably a good – good (inaudible) to start.

So the members were to – to go out at about 11 o'clock, that evening, according to this written plan. Is that right? And to commence high visibility patrols, and respond to call-outs. Can you see that?---Yes.

And would it have been reasonable for them, if the situation permitted, to – to undertake intelligence gathering, if they saw people that they could talk to, or if they could make observations which didn't tip off Kumanjaya that something might happen a few hours later?---Yes.

But whatever exactly took place at the briefing with Sergeant Frost, the men made their way straight to House 577, in an attempt to grab up Kumanjaya, as they said when they got there?---Yeah, there's – I mean I'm sort of nodding along with you, on the assumption that they actually were present when this plan was discussed and everything else. But I think there was some debate about that, about whether they'd even seen it, wasn't there?

Well her Honour is going to have to work out what she makes of the three phases of conversation that took place. I think you're probably aware of them, I'm not going to labour them. Time is short. But first, Mr Donaldson arrived. Sergeant Frost spoke to him. Then he went out and had a look around the town. Then - - -

THE CORONER: With I think a copy of the plan, or - - -

DR FRECKLETON: With a copy of the plan.

THE CORONER: - - - there's certainly evidence to point to that.

DR FRECKLETON: Quite so, your Honour.

Did you hear that, Mr McDevitt?---Yes.

All right. And then Mr Kirstenfeldt and Mr Rolfe arrived. And there was clearly a conversation with them for a time, do you – have you seen that?---Yes.

Yes. And then Mr Hawkins and Mr Eberl came to the station, and – and Mr Donaldson, the dog man, came back. And there was a conversation which one

can see on video, with the five men present, and Mr Hand was in the background. Do you accept all of that?---Yes.

Now it's going to be up to her Honour, ultimately, if she can, to determine what took place in the course of those interactions. But there was a – there was a briefing of some description. And that's agreed by everyone involved. Do you accept that? ---Yes. If that's the evidence, yes.

And the plan – the plan, according to this written document at any rate, was that there be a resumption of discussions at five o'clock the next morning. Do you see that?---Right, sorry the – a resumption at the police station?

Yes, that's right, five o'clock the next morning?---They would meet – meet at the police station at 5 am.

Yes?---And then go - - -

Then go and endeavour to arrest him?---Yes.

All right. Now the key thing was that whatever it was, presumably after five, there be an agreed arrangement as to who was going to do what, and more importantly perhaps, how they were going to do it, so as to minimise risk, and to optimise the prospects of success, do you agree with that?---That would have been a useful thing to do.

Yes, but for whatever reason, that her Honour will decide upon in due course, the men went straight to 577, and endeavoured to arrest Kumanjayi there?---So I'm not – sorry, I'm not sure what was – what was in their minds as to whether or not they were going intelligence gathering, to find out if in fact he was at 577. I'm not sure how that transpired. You know, the whole issue that I raised was that it's – you know, as soon as you had those police vehicles which are foreign to the area, go to that vicinity, then you're revealing the police presence, which is – that's the bit that hasn't been thought through properly that worries me.

And Deputy Commissioner Smalpage from the Northern Territory Police Force and Superintendent Nobbs, amongst others, have said that was not intelligence gathering, that was an attempted arrest and it's amplified by the fact that what was said at the scene at 577 and then 511 is, "We're here to grab you, mate". Do you accept that?---Well no, I'm not – I mean I'm not sure if they left actually under the impression that they were going to gather intelligence.

Well - - -?---The problem they had was - - -

- - - how could this be gathering intelligence, sir, as against going to attempt to arrest him?---Well – Well I'm not sure where they were going to – you know, if they were going to try to go out to the vicinity and ascertain exactly which of those houses he would be in, if any of them, at 5 am in the morning.

That would - - -?---The problem - - -

- - - be nonsensical, wouldn't it? Because if that's what they did, to use your words, they'd be tipping him off hours in advance of their interest in 577 and his potential presence there?---Well they – I mean they – the effect of it is that I think their presence would have been declared, which would have meant – which would have meant that if he was there then at 7 pm or whatever when they did go out there, then the likelihood of him sticking around and being there at 5 am would probably not be very high.

So it's not the inference to be drawn that they were there for whatever reason, to attempt to arrest him at 7 o'clock, not learning the lessons of three days before? ---Well possibly if they were there to – you know, if – if I take – you know, if someone's saying well they were there to gather intelligence and they were, then it wasn't a very good way to do it.

Well let's be straight about it. If that was what they were doing, it was utterly inept and ham fisted, correct?---Well it was going to declare their presence immediately, so - - -

It's going to defeat the purpose completely of any intelligence which they did get? ---I agree. It would have – it would have made it very difficult.

And not only that, they did go into 577, despite a ten or 12 year old saying he was at another house, didn't they?---Yes, they did and we have discussed that already during my evidence. But the point is that in my view, from a tactical perspective, once they'd gone into 577, from that point on they were committed. They'd been told, I think, he's across the oval at 511 or 518 or something like that. So at that point they were committed.

So they were by that stage embarked, I suggest to you, on a foolhardy plan which foreseeably was full of risk, because it was repeating the issues that had happened just three days before in a similar time of day?---Yeah. It wasn't a useful course of action and they would have been far better off if they had the local intelligence from the community police officer with them and so on, people who actually knew who Kumanjayi Walker was and exactly where he might be and if they came across someone else who was a friend of Kumanjayi, someone could talk to or whatever, so.

And the heart of that written plan was having the local police member there on the Sunday or if they had to repeat it on a Monday, same member or an ACPO who knew him well and that was as good idea, wasn't it?---Imminently sensible.

All right. Now I suggest to you that - - -

THE CORONER: Mr Officer needs time.

DR FRECKELTON: He does.

MR OFFICER: (inaudible).

DR FRECKELTON: I'll take that on board, your Honour. It's a difficult situation. This is important.

THE CORONER: It is a difficult situation, I'm sorry.

DR FRECKELTON: Now the essence of formulating the strategy to take Kumanjayi into custody, I suggest to you, was that of – the responsibility was that of the IRT members, the dog man and the local member and if Sergeant Frost happened to be there, Sergeant Frost. Do you agree with that?---To physically take him into custody?

Or to work out how to do it. Who was going to do it, who was going to be where and how they would go about it?---That was clearly the responsibility of Sergeant Frost, she was the forward commander.

Yes. And that is not the responsibility of an Assistant Commissioner or even a superintendent back in Alice Springs, is it?---Well they – you know, they can't sheet away the responsibility for this. They – they were the people who authorised the deployment, as I said earlier, having not even – not even bothered to really have a fair dinkum discussion about resources or about the risk assessment or anything else. The people, the executive own that general order on use of force. They're required to ensure there's adequate resources, that there's proper planning, that there's a risk assessment and everything else. You can't just say as both of them said, this is business as usual. They know business as usual failed three days before, so why would they go and say righto, send four more GDs and we'll just have another crack at business as usual, this is something we do everyday. I mean there's no regard for it. So I don't think that you can let them off like that and let them wipe their hands of the responsibilities here.

Now you - - -?---Sorry, that's my – that is my view.

You've been an Assistant Commissioner with the Australian Federal Police. Now (inaudible) the AFP has different responsibilities to the Northern Territory Police, do you really say to her Honour that it was the responsibility of an Assistant Commissioner himself to get involved with risk assessments and detail or planning and execution or was it in fact the responsibility of people at the station, in the town where there this was to be done?---I don't expect the Assistant Commissioner to actually draw up the risk assessment, but I would expect him to make sure that one was being prepared, that there was a comprehensive plan and that he knew in detail exactly what was going to happen. He obviously didn't. in the discussion that I read, he wasn't even aware of what IRT stood for or what equipment they were taken. It was just going to be yeah, business as usual. I think they were the words that he actually used. So there was no effective management or executive discussion of options or the safe apprehension of Mr Walker. There was no effective plan agreed

and approved and the sufficient and adequate resources weren't put in place. So I don't think you can just push all this down onto the troops, I'm sorry.

But Superintendent Nobbs did authorise the plan, did he not?---Well apparently he did and he authorised that as a plan, that document, then he should have a serious look at, you know, maybe undertaking a course on planning.

I'll stop there, your Honour.

THE CORONER: Mr Officer.

MR OFFICER: Thank you, your Honour.

XXN BY MR OFFICER:

MR OFFICER: Mr McDevitt, my name is Luke Officer and I act for Constable Rolfe. Dr Freckelton took you to – just one brief topic, the axe incident and what Officers Hand and Smith have come before this court and given evidence about in terms of what they thought Kumanjaya was doing on 6 November, being a show of force and they didn't think he was going to do anything. And you were asked questions from Dr Freckelton about whether you took that into account as to whether or not Kumanjaya Walker was someone who was going to act out in a violent manner. Do you remember those questions a moment ago?---Yes.

And what Dr Freckelton didn't suggest to you or put to you is what was on Constable Smith's body worn video straight after the incident which had him saying, "I was in the corner begging for mercy" and at trial when it was put to him about that, he said it was an expression of speech. And in cross-examination the question was, "Of course it was, begging for mercy. But at the same time you must have, in that split second when he came towards you with that axe, seen your life flashing before your eyes". Answer, "Yes, it was a combination of many things happening in that second, along with the adrenaline". Does that suggest to you that a police officer who was actually fearing for his life, which is a relevant consideration as to what occurred on 6 November 2019?---Well when you look at the cognitive processes around decision making that I was talking about earlier, you know, when you sort of perceive a threat and then you assess and reassess, you know, that threat and you then formulate a response and then you sort of direct the muscle action to put that response in place, whether that be run away or you know, pull out a weapon or whatever it happens to be. The issue is that, you know, and it's no fault of any individual, but sometimes that cognitive response can be overwhelmed by strong emotions like fear or anger or something like that, which can actually disrupt the response and - - -

Yes?---But if that – that's right, then you know, sometimes people freeze, and that's just a human reaction.

What I'm asking, Mr McDervitt, last question, is that someone who said they saw their life flashing before their eyes, is indicative of how serious 6 November 2019

was to that particular officer, that should have been taken into account, on your evidence that you've given today?---Yes, that's correct.

That's all I have, your Honour.

DR FRECKLETON: Your Honour, could I have five seconds to put one thing to the officer - - -

THE CORONER: Sure.

DR FRECKLETON: - - - just to be fair to him.

XXN BY DR FRECKLETON:

DR FRECKLETON: Mr McDervitt, I suggest to you that your analysis of imposing responsibility on the executive is wholly unrealistic, it's indicative of AFP style policing, and it is not contextualised within the realities of policing in the Northern Territory?---Well you – you can put that, but if you look at the general order on use of force, and the philosophy, it designates specific responsibilities from – to everybody, from the executive down, about use of force. And that policy. And as I said before, like it is so important, because a breach or an abuse of force is just as – so much impact on the reputation of – of an agency, that the executive have to be hugely invested in it. And I just don't think on implication, they were, I'm sorry

Not at all. Thank you for answering my questions, thank you.

THE CORONER: We'll adjourn (inaudible).

WITNESS WITHDREW

ADJOURNED