

N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Northern Territory, proceedings for infringement will be taken.

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 6 MARCH 2023

(Continued from 03/03/2023)

Transcribed by:
EPIQ

THE CORONER: Dr Dwyer.

DR DWYER: Thank you, your Honour. Your Honour, our first witness this morning is Ms Leanne Liddle, the Director of the Aboriginal Justice Department within the Department of the Attorney-General and Justice, and I call Ms Liddle.

THE CORONER: Thanks.

LEANNE MARIE LIDDLE, affirmed:

THE CORONER: Thank you.

MR NEWHOUSE: I'm representing Ms Liddle and I seek leave to appear.

THE CORONER: Yes, thanks for coming, Mr Newhouse, and leave is granted.

MR NEWHOUSE: Thank you.

XN BY DR DWYER:

DR DWYER: Ms Liddle, could you please tell the court your full name?---Leanne Marie Liddle.

I have already announced your title, but you're the Director of the Aboriginal Justice Unit?---That's correct.

And that sits within the Department of Attorney-General and Justice. Is that right? ---That's correct.

For the assistance of this inquest, you have provided a statement which will be tendered in evidence. Is that correct?---That's correct.

Is the evidence in that statement true and correct to be the best of your knowledge? ---I decline to answer that question on the grounds it might incriminate myself.

Your Honour, I think Mr Newhouse seeks a certificate in this matter.

THE CORONER: Sure. Mr Newhouse?

MR NEWHOUSE: Look, Ms Liddle is requesting a certificate under s 38 of the *Commonwealth Act* on the basis that she may have breached s 145 of the *ICAC Act NT* and possibly, 155 of the *Police Administration Act*. I know you've expressed a view on that in your decisions that it's not a breach to give evidence before you (inaudible). There is that risk that still exists and there's been no trouble for your Honour on the *ICAC Act*.

THE CORONER: Sure.

Does anyone wish to say anything further in relation to that application?

DR DWYER: Your Honour, only that I support that application. I think it's probably a formality because no doubt every effort has been taken not to - - -

THE CORONER: Sure.

DR DWYER: - - - breach, but just in an abundance of caution, might I also ask your Honour for a non-publication order over the fact that Mr Newhouse asked for that order and the order granted, because if people don't understand the *Coroners Act*, it might suggest that there's somehow some wrongdoing that a certificate is sought for.

In the *New South Wales Act*, it's automatic that there is a non-publication order over any application for a certificate. That doesn't exist in our Act and is not particularly newsworthy. And in my respectful submission, it would be appropriate for a non-publication order to avoid confusion.

THE CORONER: Look, at the moment, what I would be minded to do is grant an interim non-publication order. If anyone wishes to be heard, I would receive written submissions within three days or something like that, and then we can revisit it if we need to. But I'm certainly – I don't want to take up time with any issues around that this morning.

So, first of all, I do grant the s 38 certificate under the *Coroners Act* and at the moment, I put in place an interim non-publication order in relation to the application and granting of that certificate.

DR DWYER: May it please the court.

Ms Liddle, in those circumstances, does that satisfy any of your concerns you have to answer questions relating to your statement?---Yes. Yes, it does.

I just wanted to start off so that everybody listening might understand your position, you attach a CV to your statement. It notes your current position, but also, a lengthy CV setting out some experiences that you've had. You have a number of formal qualifications, including a law degree. Is that right?---That's correct.

You have spent some time working as a police officer in South Australia?---That's correct.

So, your CV notes that from 1988 to 1999, you were a police officer with the South Australian Police Force with a number of different postings, including in regional South Australia?---Correct, and in the cities.

And after your time as a police officer, you then have been involved in a number of different policy jobs, including senior project officer for Aboriginal-managed lands and worked with the Northern Land Council. Is that right?---That's correct.

In 2006, you were given the – or took part in the United Nations Indigenous Fellowship program in Geneva. Is that right?---That's correct.

And you have come to the Northern Territory, I think, to work here in 2016 – I withdraw that, from 2014?---2014, yes.

After your time in 2016 as a principal policy officer, that was for 11 months. You then took on this job as the Director of the Aboriginal Justice Unit?---That's correct – actually, no, I was their senior policy officer, policy lawyer reviewing legislation for the *Youth Justice Act* and other legislations.

I see. And did you go straight from that to this job as the Director of the Aboriginal Justice Unit?---Yes, I did.

Are you able to broadly outline what are – I'll come to the Aboriginal justice agreement shortly, but what is your role as Director as the Aboriginal Justice Unit? ---So, from the very beginning, we were given a role to establish a Aboriginal Justice Unit, which was – had asked from a lobby group in the Northern Territory which government agreed to that delivers fair and just outcomes for Aboriginal people in the justice system. My role is - I have a small team. I had a very small team while we did a lot of the consultations to capture the content for the justice agreement. But now, I think I'm up to about seven or eight fulltime staff and our job is to delivery on the final justice agreement over seven years and its 42 actions.

And I'll come to the AJA shortly, but you point out there's three aims, 13 commitments, 42 actions that are to be delivered over seven years as part of the Aboriginal Justice Agreement?---That's correct.

Does one of your staff members include a serving police officer?---Yes, it does.

And could you just tell us that rank of that officer?---He came into the unit when he was an acting commander. I believe his base rank is superintendent.

As I say, I'll return to that shortly. But I just wanted to point out in your statement some preliminary comments that you make. At par 8 of your statement, you say this, "I've worked in the justice system, including policing, for 30-plus years and I know many police who work for the benefit of all, who understand and care for social and welfare needs of those who they interact with." And I wanted to point that out because we've heard from a number of officers in this inquest that they feel strongly about the racist text messages that have been revealed, that that is hurtful to them as police officers who care very much about their communities, and that they feel very strongly that they do not wish to be painted with the same brush about being a racist, and they reject any sense of that. Can you appreciate that very their perspective, having been an officer yourself?---Yes, I can. And I can understand their passion and the reasons why they joined the police force, but that is on an individual level. It becomes problematic when you get systemic racism inside the institution and structures that support that institution. And officers individually have

no control over how that operates, functions and what it looks like and how it plays out.

You – we've heard also from officers about the challenges of the job. For example, Senior Constable Brad Wallace, and I'll take you back to his evidence shortly, but he gave evidence about how challenging it is at 2:00 or 3 o'clock in the morning. You're dealing often with young people, for example, who might have FASD or other difficulties. They've come from trauma and it is the police who have to pick up the pieces at 2:00 or 3 am and work out how to try and protect people in those circumstances. It can be a very tough job, can't it?---Yeah, it has its challenges, but it doesn't excuse any bad policing or racist policing that exists in the system.

Can I come back to something you said earlier about individual police officers might be very well motivated and operate very well themselves, but there is systemic disadvantage and systemic racism embedded within the system. What do you mean by "systemic racism"?---So, there's various definitions of "systemic racism". I need to say at the outset that systemic racism is misunderstood and it's often denied and challenged, deflected or dismissed. But systemic racism is racism that is structured into political or social institutions that discriminate either deliberately or not deliberately, consciously or unconsciously, within a system that impacts and delivers unfair and discriminatory outcomes for specific racial groups or, particularly in this case, Aboriginal people.

Because we're dealing in Australia with colonisations and the impacts, devastating impacts, of colonisation, does systemic racism affect or pervade all Australia society one way or another?---The impact of colonisation has been built on the presumption and the foundation of systemic racism because it's the dominant culture with privileges that didn't have Aboriginal people feed into those systems to make sure that there weren't discriminatory outcomes or that the impacts weren't unfair and detrimental to any particular races.

So, you're not just singling out police there, it's actually – there are – there are systems of government in Australia that are affected by that?---Yes, and it's often not just governments, it can occur in larger institutions, non-government organisations. But – that – it sits there, often quite silent, and it sits as accepted, and considered business as usual, because it's been in the system so long unaddressed or unchallenged. And that's the problem with systemic racism.

In par 13 of your statement, you refer to the history of policing, and police powers, and you note that "It is, in many ways, inseparable from the history of frontier wars, past and present. State policing institutions were founded in frontier wars, genocide, and racist violence." And this inquest has heard a lot about the Coniston Massacre, that affected so badly the people around Yuendumu. Is it important for police as an – individuals, and an institution, to understand that history?---It's integral to your work and your obligation, as far as I'm concerned, as an Australian person living in Australia, to fully understand the history. And particularly in the police force, the relationship that Aboriginal people had, and what they did, and what role they played in the massacres. But also more recently, even with the legislations and policies of

the time say it's a Stolen Generation that we still see the impacts today that – that display themselves in the child protection system.

I think those of us at the Bar table would acknowledge how much we've learnt from reading this brief of evidence about the history of massacres in these areas in the Northern Territory, but also the – the chronology of our history, in terms of Stolen Generation, and the practices affecting the Northern Territory. Is it your experience that many Australians are ignorant of these issues?---They're either ignorant, or they make up their own histories, or their disbelief. And that is part of the excuse that people put when they see racism at play. I don't know how you could operate in the Northern Territory without knowing the history about Aboriginal people in this country, and then understand how you can work well with Aboriginal people, and have a level of empathy, not sympathy, but an understanding of what this means to how you interact with Aboriginal people, and what – what's happening today with – and as Aboriginal people in 2023.

You distinguished between empathy and sympathy. I think you've done that elsewhere in your statement. What do you mean by that? What's the relevance of that difference?---So a lot of people think that empathy is about sitting down and being upset with people, and comforting people. But empathy is more about understanding and believing the role that the massacres, or the tragedy, or the hurt and the harm that's been caused, how that impacts on Aboriginal people, and what that means on how you treat Aboriginal people, and work with Aboriginal people.

We have received in the brief of evidence, new materials that have been prepared by Northern Territory Police since Kumanjayi's passing, that have re-worked induction documents, and training packages, for police, to have a much more detailed understanding of that history. In addition to that, induction packages for each community that focus on issues relevant to the community. Would you welcome those as initiatives?---I believe that those sorts of packages are a start. But there's so much more that you need to know, and be so skilled to work well with Aboriginal people. And understanding of the history's one thing, but to be skilled and professional to be able to work well with Aboriginal people is a completely different skill that requires a different type of learning package.

Are you able to indicate some of the skills that are required to work well with Aboriginal people?---Listening is one of the most critical features. Not generalising Aboriginal people, so think that people say from communities in the north, Ngukurr, Groote Eylandt are the same as Aboriginal people in the central desert. Our histories are different. The impact of legislations being different. Our – how we operate is very different. So to have information and knowledge that we're – we're not one big group, classified as Aboriginal peoples, important. And each different group requires different skills. Listening, that level of empathy, but it requires skills around understanding that Aboriginal people speak English as a second or third language. And not using language that is condescending or derogatory to Aboriginal people, that may insult, or cause further pain and harm.

One of the consistent messages through this inquest, is the need for people who work with – with – in Aboriginal communities, to show respect, and to understand what respect means for communities. What we have heard, is that there is a consistent feeling amongst many Aboriginal people that there's been a lack of respect towards them. Has that been your experience in terms of hearing from Aboriginal people about how they feel?---Without doubt, across the whole Northern Territory, when we did the consultation, the lack of respect and law was outlined time and time again.

THE CORONER: Can I just ask you, obviously there are cross-cultural education packages delivered in the NT Government to employees. And you're talking about – which provide information, I guess, you're talking about a different learning package. Is there such a learning package that's been developed?---No there's not. And that's why I'm critical of cultural awareness programs. And any level of cultural competency. Those packages and training, they are passive. They usually last an hour. They don't – they use a general approach. They don't require any auditing or accountability once you've left that training session. And in some instances, there – they're actually not – they – they – there is evidence to prove that cultural awareness training does not change a person's behaviour. In fact, it may change it the other way. People then use that training as a reason why they continue to behave in an inappropriate way with Aboriginal people.

Is there any plan that you're aware of to – for the NT Government to try and prepare, or deliver, different types of learning?---Not that I'm aware of. But that would be our intentions with the – our Law and Justice Group membership. Under the AJA deliverables, that those members are paid to deliver training that's specific to the region that government employees may be working in. And that they are mentored and shadowed until people feel that they are confident to work well with Aboriginal people.

DR DWYER: I'm going to take you shortly to reforms that are aimed at empowering, or re-empowering Aboriginal people, pursuant to the AJA. But before I do, your statement outlines some of the major policies introduced by the Australian Government that have led to the disempowerment of Aboriginal people. And I in summarising, I'm obviously not doing your statement justice, dispossession from a land, as a result of colonisation. The Stolen Generation, and the Intervention. In 2007, the Howard Government enacted the *Northern Territory National Emergency Response Act*. And a number of agencies, including the army, were sent into Aboriginal communities in the Northern Territory. You outline in your statement why the intervention was so damaging for Aboriginal people, in spite of the fact that it had aims to improve lives. Why was it so damaging?---Because it was imposed onto Aboriginal people. They had no input into the decision-making process. They didn't prioritise any of the decisions in all those type of legislations, and changes that came from the intervention. The Aboriginal people had no input into the prioritisation or the pace, let alone who they were being – who was responsible for delivering on that. And secondly, there was no accountability, or ability for Aboriginal people to feed back into these actions that were imposed on Aboriginal people across the Northern Territory. And I think that's why we haven't seen the improvements, despite the 15-

year time lag and the money that's been invested into that – into that – into those areas.

You point out – this is at page 5 of your statement, par 16 – that since the intervention incarceration rates in the Northern Territory have doubled for Aboriginal men and tripled for Aboriginal women and Aboriginal suicide rates, particularly for young people, have increased six-fold. So there have been – there has been in effect more disadvantage and more harms that are calculable since the intervention, is that right?---That's correct.

You describe it as gross values in terms of policies and procedures that have operated for Aboriginal people since then?---I not only saw that, I also was told that through the consultations and continued to get told that by Aboriginal people and non-Aboriginal people.

Your statement refers to many of the recommendations from the Royal Commission into Aboriginal deaths in custody reporting in 1991 and it points out that many of those recommendations have not yet been implemented. Your statement will be tendered in evidence, so I don't need to go through them all. But is it – am I correct that a philosophy underpinning the recommendations of the Royal Commission was the need for communities to take control over their governors and to in effect have self-determination?---That was correct. That was the intent of the Royal Commission to allow Aboriginal people to be in control and in charge of the decisions at the very least, allow input from Aboriginal people into policy reform and legislative changes and more.

Recommendations 2, which is set out par 7 – sorry, page 7 of your statement, notes that there should be an Aboriginal Justice Advisory Committee set up in each state and that would reflect the views of Aboriginal people, not just those in rural – not just those in urban areas but those living more remotely. Are you aware of whether or not Aboriginal Justice Advisory Committees were then set up in each state and territory?---To the best of my knowledge, none were ever set up.

I'm just taking some of those recommendations to illustrate your points. But at page 11, for example, recommendation 88 was that police services in the ongoing review of the allocation of resources should closely examine in collaboration with Aboriginal organisations whether there is sufficient emphasis on community policing. So even back in 1991 there were specific recommendations directed to police services that they engage with Aboriginal communities in determining what is appropriate for governance?---That's correct.

At page 15 of your statement you point out that recommendation 104 was that in the case of discreet or remote communities, sentencing authorities should consult with Aboriginal communities and organisations as to the general range of sentences which the communities consider appropriate for offences committed within the communities by a member of those communities. And further, that there – subject to preserving similar legal rights of offenders and victims, consultations should in appropriate cases relate to sentencing. In effect one of the recommendations was

about community courts and engagement with Aboriginal people in the legal processes. How important do you think that is in the Northern Territory?---They're critical because at the moment Aboriginal people feel like they have little control or power in the system. They want to take responsibility and be held accountable for the behaviours that commit a crime in their communities and in other places. The community courts allow Aboriginal people to feed into that process so that they can hold that person accountable. But also there is sufficient restitution for victims in communities as a whole where that behaviour may have impacted on that courts may not be aware of.

And is it part of the plan under the Aboriginal Justice Agreement, to see community courts?---Yes, definitely.

And would you also like to see Aboriginal people involved in a sentencing process at the Supreme Court level?---At this stage we are just dealing with them in the community court process. There is no reason why the Aboriginal experience reports, Gladys Ongi (?) reports would not be applicable and – not – they would be just as useful in the Supreme Court process.

So in your statement you refer to the *Bugmy* Reports which are now named after the case of *Bugmy* in New South Wales being utilised and the Gladys (?) reports, a Canadian concept. Are you able to tell the court what that involves and how the community voice might be heard as a result?---So those reports have shaped our Aboriginal experience reports which we will roll out when we deliver community courts as part of the Aboriginal Justice Agreement. Those reports have information that would assist the judge to make different decisions, at the moment, around appropriate sentencing, appropriate rehabilitation, to make sure that the restitution for the victim is there, but also to make sure that that person gets the best access to help and resources and the judge gets the information in front of them to ensure that that person does not reoffend and can get the help that they need to tackle the behaviours that impact on their offending.

With respect to community courts and the type of Gladys or *Bugmy* reports needed, they are going to need to be properly resourced, aren't they, rather than to be ad hoc or to impose that burden on the communities without resourcing?---That's correct. The Aboriginal Experience Reports would also be including information on people's medical conditions, any assessment, psychological or otherwise, any assistance and background information that doesn't usually get found or is taken into consideration into presentencing reports that the judge gets before the current court system.

One other recommendation I wanted to take you to, finally, noting that there are many other set out, is that recommendation 113 to 114, page 17 of your statement, you know the recommendation that where noncustodial sentence orders provide the community work, authorities should ensure that local Aboriginal community participates if its members choose in planning those programs. And to summarise, to make sure that those programs are meaningful for Aboriginal people who are required to do them. At the moment we have heard that Yuendumu doesn't have Community Corrections set up there. Was that something that you heard throughout

the different community consultations?---Yes. Aboriginal people wanted to be involved and would do that through the Law and Justice Group Membership. Not only compliance of any community services orders, but feeding into what is suitable community service. So not just picking up rubbish, it has to be relevant to the penalty for the offender to pay back to the community and the victim as to what they've done, so that the community can be part of a decision making process that they've been taken out of for so many years.

And then the participant, presumably feels responsible to the community, rather than to a justice system that is vague and unknown to them?---Well we got often told was that Aboriginal people losing a licence for 14 days or 12 months does not have the impact that it has that if you are under the guise of senior community members who hold you responsible for or makes sufficient orders that, say for example, you aren't to attend a particular ceremony or that you have to be under the shadow of a particular senior person in the community and ask their permission before you go anywhere, those sorts of sentencing conditions community people told us would have more impact than losing your licence for 12 months.

I asked you I think about one of the recommendations was that each state and territory have an Aboriginal Justice Advisory Committee. Does the Northern Territory have one of those at the moment?---Not a Justice Advisory Committee but we do have a committee that oversees the Aboriginal Justice Agreement, called the Aboriginal Governance Committee.

And should that continue beyond the seven year period that the Aboriginal Justice Agreement is being rolled out?---In my statement I outline that there's a need for an Aboriginal Justice Commission. In hindsight, since we've written the agreement, we recognise that that is probably the best body that could move forward to deliver on and deliver on the agreement.

Why an Aboriginal Justice Advisory Commission?---Because there is a lot of deflection and denial and cherry picking of some of the deliverables within the Justice Agreement, that the committee does not have the power to be able to drive. And that then means that the intent of the Agreement isn't met. And we won't be able to achieve the three aims over the seven-year time frame.

We come to the Aboriginal Justice Agreement then.

And I just ask [Edited] to put up, it's 20-2, and page eight if you will please [Edited].

The aim's there are a bit difficult to read, Ms Liddle. But I'll just read them out. The aims are articulated in (inaudible). "Reduce offending and imprisonment of Aboriginal Territorians. Engage and support Aboriginal leadership. And improve justice responses and services for Aboriginal Territorians." And the principles have been set out on the next page. And we see six bullets point from the bottom. One of the important principles is to "Value and support Aboriginal leadership and local decision making"?---Correct.

There are, as you noted in your statement, 42 actions delivered over seven years. Before I come to the specific actions, what was the – if you could just outline –

That can come off now, thanks [Edited].

What was the process of consultation with Aboriginal communities before the development of the Agreement?---Before, or to capture the content?

To capture the - - - ?---For the AJA. So it was a very extensive process. We did a total of 160 consultations. We visited over a 120 communities. Where I could, I grabbed the assistance of the Northern Territory Police Force and with the help of my 2IC, Warren Jackson, he and I, went across the length and breadth of the Northern Territory. We spoke to people in consults. Usually out in the open. We took with us cultural brokers and interpreters. We then engaged statisticians. We seconded people from the Bureau of Statistics in Canberra to help us. We dealt with researchers and coronial reports. And that's how we came to firstly a draft Justice Agreement. Which then resulted in the request for submissions from the wider public, and more. And from that, then we landed on the final Agreement, which was a total of three years of content, consultations, research, and more.

You – one of the communities that you visited was Yuendumu of course, is that right?---That's correct.

When you visited communities, is it correct that there was a register kept of all the comments made by community members?---That's correct.

And that was to help capture the comments so that you could feed them into the process. Do you have the register that is relevant to Yuendumu?---I have the register, yes

Your Honour, I call for the register, if it causes no difficulties for Ms Liddle to provide that. And then we'll provide a copy to parties?---So the – are you just requesting the content for Yuendumu itself? Or the entire content from the first round of consultations?

The entire content from the first round of consultations?---So I might have a bit of difficulty in that, because the first round of consultation is a Cabinet in Confidence Document.

I see. Are there any documents on the registers that are not Cabinet in Confidence that we might see?---The second round of consultations I understand was not dealt with in Cabinet in Confidence. And that includes the Yuendumu consultation.

Thank you very much for clarifying that.

I call for that document.

THE CORONER: The second round of consultations.

DR DWYER: The second round, that includes Yuendumu.

THE CORONER: Thanks, so we'll receive that in due course.

DR DWYER: Thank you very much.

In relation to Yuendumu, you set out some of the concerns of the community that were relayed to you from par 152. You note firstly that there was good engagement from the community of Yuendumu. Is that right?---There was. There extremely was, yes.

One of the concerns that was highlighted for you was the health clinic. Community members asked you why the clinic closed, why it was closed on the night that Kumanjayi passed away, so that Kumanjayi had no help from the clinic in terms of tending to his wounds. What can you tell her Honour about what was expressed to you in terms of the level of distress?---The community members that were present at that consult, keeping in mind that we had people that were on the phone from other communities. From Lajamanu, Kalkaringi, and also Alice Springs Hospital. And people were concerned that the health professionals had left the community without notification. And they were extremely worried, that as a result of that action, they – the people that they were responsible for, the sick and the elderly, unbeknownst to them, did not have access to any medical help.

There was a concern about the absence of consultation with community groups before the health service left, is that right?---Yes, there definitely was.

One of the other issues you point out is that during the consultation there were issues raised about police. The community specifically expressed to you, that they did not want guns worn in the community by local police. Is that right?---That's correct.

The crowd talked to you about how they used to work well with the police in the past, but there was a perception, at that time, in 2020, when the consultations were being taken – were taking place, that the relationship had changed?---That's correct.

You note at par 161, that there was also discussion about how community members talked about how Aboriginal customary law needed to come back, so that they could help to restore law and order. Was there a concern from community members that they were not able to help deal with the behaviours of their kids?---There was a lot of conversation around they could not get access to any help that were – that was available to prevent their kids getting into trouble, and creating problems in the community. And there was a – statements made that community – people that worked in the community for the community, just weren't listening, and took no notice of what Aboriginal people had to say.

I'm going to come back to the actions under the AJA shortly, but would establishing law and justice groups help to empower Elders and leaders in the community to deal with young people in trouble?---That's one of the most essential deliverables within the Justice Agreement.

Another point, I won't go through all of your statement Ms Liddle, but another point you – you refer to, which her Honour has heard a lot about in different statements, is the impact of the creation of a super council. The removal of local shire councils. Can you tell her Honour about that and what was expressed to you?---It was expressed to me that community had lost control of any decision making power that they once had. They had no control over how much money came in, where it was spent, how it was spent, who was employed, how people were employed, and people talked about how the role of the shires were not the same as the once Aboriginal community led councils.

You refer in your statement, to major issues that were talked – that you received information about at consultations involving racism. A major complaint that came up in consultations was racism, in all its forms. This at – from par 71 of your statement. You say, "Some people do not even know that what they experienced was racism. For many people, racist experience were thought to be the norm. Just the way that you're treated and expected to be handled, because you're Aboriginal." That's at page 72 of your statement. And 73 you say, "Issues of racist behaviour were most often raised against police. But there were others who received criticism, including NGOs, the service providers, store managers, school teachers, and medical staff." Can you – it's a big question, but can you give us an example of what you're referring to there, types of concerns?---So racism was the number one issue that was present in every one of those 120 consults. It was the number one topic that people wanted to talk about. Alongside, but sitting behind, the impact of the intervention. People weren't aware of when they were being – when people were being racist to them. And they weren't aware about how and what systemic racism was, and how that then was applied to the delivery of services to their community.

Misunderstanding Aboriginal culture is another issue that you said was communicated to you across the board, is that right?---Misunderstanding, yes, particularly around payback.

Can you expand on that?---So people that we talked to, particularly most, in fact probably all non-Aboriginal people that talked to us around payback have a misunderstanding of what payback is and how it's delivered and its intent. And that's an example for me of how inadequate cultural awareness is, because it differs from different regions across the Territory and it's something that's misunderstood by non-Aboriginal people but fully understood by most Aboriginal people.

In terms of payback, this court has heard – the issue has been raised, including with Senior Constable Brad Wallace (inaudible), this court of course can't condone grievous bodily harm and it's against the law. Would the creation of law and justice groups and community, the involvement of Aboriginal people in community courts help to serve that role where Aboriginal people feel they can take control of the

processes of punishment and rehabilitation?---In some communities people said that they recognised that payback wasn't applicable as a penalty, because of its injustice in its application. What people did want back was cultural authority. It was the platform that replaced any words around payback. But they felt they weren't getting any authority or decisions under any current regime that was present in their community and the ability to have a Law and Justice Group was the way that they could ensure that people were – had penalties that were relevant to their communities and that they could be held responsible for, for the compliance and recreate some of those values that Aboriginal people wanted back in their communities from honesty, integrity, respect for elders and more.

Just before I move on from some of the individual findings, you note at par 77 that many of the community members complained about police using derogatory racist names for Aboriginal people, often before the incidents were – or the incidents weren't recorded because body worn cameras weren't available. It might have been before body worn cameras were available and made mandatory or because body worn cameras were turned off. Do you mean to say there that during the consultations Aboriginal community members told you about experiencing racist comments?---Yes, that was a frequent comment that we received from Aboriginal people when the consultations.

Overall in describing your experiences over those three years and during those conversations, you note that it was devastating for you on a personal and professional level, is that right?---It was devastating because it was embarrassing that I had thought that we had – would move forward, given the investment, the presence of police, health and others in these communities that weren't there before. But I have been ashamed to think that that's an improvement when it certainly wasn't an improvement. It was one of the most devastating experiences of my life to witness the cruel treatment, the behaviours of people in those communities and the lack of investment in communities.

You go on to note some of the issues include the lack of adequate housing. Houses were noted to be better on the non-Aboriginal side of town, so areas where community members were not living, housing was much better. That there was a sense that Aboriginal people were disempowered and there was a lack of meaningful work, real jobs. And a lack of adequate services for Aboriginal people, including, for example, that Aboriginal people couldn't get house repairs done in any timely way? ---That's right. And a lot of those communities had service providers whose job was to do the house repairs or was to get them linked up to Centrelink and more. But community members were unaware of that role that that person had in that community.

You say at par 109, "Everywhere we went there was a lack of Aboriginal people employed in key positions or authority or in fact any positions". There is a huge amount of unemployment in areas where nevertheless the community is crying out for services?---Yes, that's right.

How is that addressed?---How is that addressed. Well for a start, you've got people as language speakers in a community they speak three or four languages. Nearly – and that – in the remote communities nearly every Aboriginal person speaks a language. I see employment roles and opportunities there for people to be registered as qualified interpreters, to assist government service providers to deliver services better and take up those roles so that they can better service Aboriginal people and the communities. I see that Aboriginal people can be employed in shadowing government agencies and government workers, non-government workers to know how to operate and function well respectfully in communities. There are huge opportunities for employment that just get taken up by others that are not Aboriginal people.

You note in par 43 as part of the AJA senior bureaucrats including police should have their personal key performance indicators developed in conjunction with Aboriginal communities. And in addition to other KPIs they should ensure that Aboriginal communities are advanced and protected. So there should be measurable criteria for improving the welfare of vulnerable individuals. Should there also be measurable KPIs in terms of improving employment rates and improving engagement with Aboriginal people?---That should form part of the KPIs. But the KPIs need to be developed with Aboriginal people, because how else do you know that you're delivering what Aboriginal communities need. How else do you know if you're working well and appropriately with Aboriginal people unless you get that feedback from the people that you are actually serving in that community.

When you're asked what impact the AJA could have in Yuendumu, for example – and this is from par 170 – you give a number of examples about how the AJA could help. It could help improve relationships with all government agencies, not just police. But with police, for example, the AJA means Aboriginal people would work in partnerships with local police. We have heard evidence in this inquest about the role of ACPOs, the role of ALOs and the efforts of Northern Territory Police to recruit Aboriginal police officers. What does an AJA do on top of that to ensure that Aboriginal people work in – I withdraw that – that there is a proper partnership between police and Aboriginal people?---So we would assist the Northern Territory Police in any modelling that they had, any policy or reform that they had, to make sure if they needed feedback from that particular community on these issues. Noting the history of disengagement with police, particularly in Yuendumu, we would be able to feed that into any policy reform through the assistance of the Law and Justice Groups. That would include anything from employment strategies and plans to changes of policy, to health, Aboriginal people want to feed into cultural courses and more, for police operating in Yuendumu.

Can I come to the Law and Justice Groups? It's the second action in the AJA is to establish and support Law and Justice Groups. Can you tell her Honour in which communities currently is there a law and justice group?---So at the moment we launched one with the Minister in Kintore, which is to the south-west of Alice Springs. We have also established one in conjunction with the Anindilyakwa Land Council, the ALC in Groote Eylandt. And we also have one established in Maningrida.

And are you aware of whether there are any plans for a Law and Justice Group in Yuendumu?---I understand there are plans. I understand there's another name attached to that. That wasn't our intention to have a Law and Justice Group when we first started to roll those out in respect for the court processes that were happening. But there will be a Law and Justice Group of some name in Yuendumu at some point in time.

You are aware of the work of the Southern Tanami – the Kurdiji group?---Yes, I am.

Have you had engagement with the Kurdiji group?---Look, we tried to engage with the Kurdiji group on several occasions and to understand what role they played, but we were really unable to establish exactly what they did. I am aware that they have mediation roles, but that's all that I know.

Did you get a sense, when you were in Yuendumu, of the massive impact of Kumanjayi's tragic death on the community as a whole?---Yes.

And the trauma that that has caused all community members?---Not just the trauma of the community members, but the outstations and the homelands and the impact on visiting Aboriginal people as well. It was significant. There was significant shift in the way that Aboriginal people told us how they consult - how they had previously had relationships with people and they thought they were now fractured.

And are you able to suggest ways in which there would be a rebuilding of relationships, trust, since that devastating death?---Any decisions that get made in Yuendumu need to involve Aboriginal people from now on, any policy reform, any training packages, any employment of Aboriginal – any person in that community really needs to have input and decision-making support from Aboriginal people from those communities.

Just before I move on from Law and Justice Groups, you note at par 230 that you have been advised that all Law and Justice Groups will now be delivered by the Department of Chief Minister's Officer. It's unclear what the AJU's role is in delivering this task. Is it still the case that you're unclear what the role of the Aboriginal Justice Unit is, and have you seen that?---That's right. I've been told that the AJU hold the policy reform and that the chief minister's officer will roll out the operational components.

THE CORONER: So, you can't enlighten us as to how the operational component of a Law and Justice Group in Yuendumu might be rolled out?---Not in Yuendumu, because the model that we had established for the other Law and Justice Groups is quite different to that of what is being suggested for Yuendumu.

DR DWYER: Just one further topic and then I need to let my friends have some time with you, Ms Liddle – I don't need to take you back to the document, but action number 3 in the Aboriginal Justice Agreement is to promote the uptake of leadership roles for Aboriginal people, and included in that is justices of the peace, commissioners for oaths. And you've noted that, until recently with the appointment

of Woodroffe J, there was no Aboriginal judge in the Northern Territory. You specifically say in your statement that, "It is of concern that there are no commissioned officers who are Aboriginal in the Northern Territory. In the history of 200-odd years, there's no Aboriginal Liaison Group that the police can refer to as a safety net to air their concerns confidentially." Are they important things that need to happen; firstly, as a key performance indicator, there needs to be commissioned officers who are Aboriginal who can properly advise the Northern Territory?
---Without doubt, because the decision-making happens at that commissioned role and officers are not in a position to direct or enforce policy, my concern is, to the best of my knowledge, there has been no NT Aboriginal police officers employed in the Northern Territory Police Force. I think that's a systemic issue that needs addressing. I think the ability to have a liaison group where Aboriginal police officers can confidently and confidentially talk about issues for improvement in the Northern Territory Police Force because of the history and also, just for good practice, needs to be embedded in an independent space and not within the agency itself.

So, is that something that could be embedded within the Aboriginal Justice Unit, separate to the police?---That could be a role that the Aboriginal Justice Commission performs.

I see?---And takes up and is allocated, because I'm sure there's other Aboriginal people across the whole of the public service that would appreciate and welcome an ability to speak candidly, confidently and have their issues raised without any issue of being – feeling like they're being targeted for speaking out.

Just one final question I wanted to ask you about, drawing on your expertise, we know that language matters and throughout your statement, you refer to Aboriginal people, at different times, questions have been asked using terminology First Nations, when you were doing your consultations, what was the appropriate term?
---So we asked that question when we went into any Aboriginal consult and also while we were writing the document, we confirmed with parties, how would they like to be referred to, and people told us that "Aboriginal" was the term that they wanted and we continued to ask that question as part of good practice, as part of our role as the AJU.

So in submissions that we, at the bar table, make or in her Honour's findings, is it appropriate to use the term Aboriginal rather than First Nations?---Correct. That is our – that is our advice as a result of those 120 visits to communities.

Thank you.

Those are my questions, your Honour.

THE CORONER: Yes.

DR DWYER: And your Honour, might I just note, I haven't put them up on the screen, because I'm conscious that my friends have questions, but we have within the brief of evidence these extremely valuable documents which are the Northern

Territory Aboriginal Justice Agreement, the Northern Territory AJA Action Plan, which is at 20-3, the Northern Territory AJA Implementation Strategy from 2021 to 2027, which is at 20-4, and a Pathways' document relevant to that at 20-5.

THE CORONER: Thank you. Yes, other questions while we have Ms Liddle.

Yes, Mr Mullins.

MR MULLINS: Thank you, your Honour.

XXN BY MR MULLINS:

MR MULLINS: Ms Liddle, my name is Mullins. I appear on behalf of the Brown family. You have discussed, during the course of your evidence, what you've described as "systemic racism", and the Australia Human Rights Commission defines "systemic racism" in this way, and can I just have your comments on this definition, "Systemic racism refers to the history, ideology, culture and interactions of institutions and policies that work together to perpetuate inequity. It describes a way in which institutions and structures fail to provide adequate service provision and equal opportunities to people because of their racial or cultural background. Systemic racism is responsible for certain communities experiencing poor life outcomes, lower pay and less opportunity for advancement within leadership positions." Do you have any comment on that definition, or do you agree with that definition?---Yeah, that is one of the definitions that I agree with, yes.

One of the focusses of the definition of "systemic racism" is on the consequences to Aboriginal people in this context. Is that right?---That's correct.

And it doesn't focus necessarily on the intention of the person or the institution it's engaging in systemic racism?---That's correct. So an individual may support racist practises just because it's the norm and it sits within the system and it's historical and it hasn't been addressed.

Yes. And so, there are some examples that have arisen during the course of the inquest, and if I can just get your comment on them. Firstly, there is an organisation that operated in the community and in the days prior to the passing of Kumanjaji Walker, there was some discussion about the prospect of that organisation leaving the community. And that organisation employed a number of different members. Some of whom were Indigenous, and some of whom weren't Indigenous. When a meeting was conveyed, to discuss the prospect of leaving the community, the non-Indigenous members were invited, but not the Indigenous members, or community members of that particular organisation. One witness said that those community members were not excluded, just not included. Do you have any comment on that situation?---That's a perfect example of systemic racism. Because who makes that decision of who's included and who's excluded.

The second example is, that the evidence is that Derek Williams, a serving ACPO, was in the community, on the day that Kumanjaji Walker passed. Soon after the

shooting, he and his father attended at the police station, when Kumanjayi Walker was receiving treatment from the officers, and spoke to officers at the station. Both – both Derek and Warren Williams were calm. And seeking to help. They subsequently went outside, to assist in the management of members of the community outside the police station. And Derek Williams was the only police officer, who was not told about the passing of Kumanjayi Walker during the evening of 9 November 2019. Now there's been different reasons given for that. But broadly speaking, he wasn't told, because he was a community member. Do you have any comment on that?---That's another example of distinct racism, or overt racism and systemic racism in the system.

The third example is that there's evidence from one police officer who was inside the police station, that in the minutes after the shooting, he learnt by radio, that a community member had been shot by a police officer. And this is what he thought. This is from transcript 659.

“There was a real possibility the police station could be stormed. There's only glass doors out the front. There's open access from the front to the front doors. There's lots of windows in that front side. On that front side of the police station. So where the sergeant's office is, there's a window there. All it would have taken is like a big rock to get thrown through a window or a car to get driven through the doors, if they were that angry. And then one – all it takes is one person to go through, and the whole mob will go through.”

Now the witness then explained that he'd actually never had that experience. But that's what he thought might happen. Have you got any comment on that? ---When you on characteristics to a certain group of people, in this case, Aboriginal people, and from what you've just told me, the assumptions, falsely, are that this group of people are violent people and aggressive. And yet there's no evidence behind that to prove that. That is another example of racism.

Another witness gave evidence, in respect of the behaviour of different communities. And you averted to this earlier in your evidence, that all the – that the communities are different throughout the Northern Territory. And when asked about a similar perception, this witness said – well the question was,

“Are you aware of any evidenced of anybody in the Yuendumu Community, that is the Warlpiri people, storming a police station?---No.”

“And attacking a police station in these circumstances?---No.”

“But or any related circumstances?”

And the answer was,

“There is evidence, as I've been – I think at other localities, where there's been significant unrest, and I think there has been some community violence, quite extensive, at Yuendumu, previously.”

Now setting aside the second portion of that question, about Yuendumu previously, what do you think about the significance of there being unrest or violence in other localities, as being significant in assessing what should have been done on that particular evening?---I think it shows that people need more experience in working with Aboriginal people, from that particular region. If they align one characteristic with a group of people, and if they align a characteristic with a group of people that they've had no evidence to prove otherwise, I think that shows the lack of cultural awareness that Aboriginal – non-Aboriginal people have working in Aboriginal communities. But again, it shows that characteristics of Aboriginal people are aligned as, particularly in this case, Warlpiri people, violent, aggressive people.

There were several untruths told to the community over the course of the evening of 9 November 2019. But there's one in particular that I would like to draw your attention to. A police officer called the grandfather of Kumanjayi Walker soon after midnight on 10 November 2019. Kumanjayi grandfather was seeking information about the status of his health. Kumanjayi had actually passed away more than three hours prior to this conversation. But he was told that Kumanjayi was still receiving medical treatment. And the purpose of telling him that untruth was revealed in this evidence. Question, this is 2634,

“And it was even more significant of this community, because you understand don't you, that for the Warlpiri people, and other Aboriginal and First Nation's people, that death and family are very important?---I understand that, yes.”

“And so this message that you were giving to Eddy, wasn't just Eddy. You understood that the message that you were giving to Eddy was to the whole community?---Correct. I understood that he would have discussed that message.”

“All right?---That information with other members of the community.”

Do you have any comment on the – the conveying of false information in that sense, and what might go behind that?---That type of behaviour relays a lack of trust and the inability for an Aboriginal person who's been told to keep something so sensitive and confidential, that way, that aligns characteristics to Aboriginal people that we are – can't be trusted. Can't be trusted with confidential information. And because that's influenced how that officer's operated, assuming it's an officer that – you did say officer.

I did?---Had relayed that information, then again, that's another example of racism.

Nothing further, thank you, your Honour.

THE CORONER: Mr Espie.

XXN BY MR ESPIE:

MR ESPIE: Ms Liddle, I represent NAAJA in these proceedings. Broadly speaking, NAAJA's – some of our focusses are on broader systemic issues and reform, that sort of thing. Not unlike the – some of the aims of the Aboriginal Justice Agreement. Just focussing on some of your – your responses. NAAJA would submit that communities, for example, should have a say in type of police that come and work in their community. And you've discussed some of the attributes that make good policing, in relation to working with Aboriginal people. And discuss issues of racism within police – NT Police. What's your view on the suggestion of people from our own community having a voice, having a say (inaudible) obviously (inaudible) defining decision on who works in their community, but having some avenue of providing input into decision making around the police that work in their community? ---So I think that the Aboriginal people from the community need to be part of the recruitment process, or at least have an ability to feed into any recruitment process. Whether that be from the store keeper to the police, to the nurse, to the doctor, to any position in their community. But there also needs to be a feedback process, where KPIs are also provided by the communities, so people are given an opportunity to improve any skills that they may be lacking in, and that can be addressed by the Aboriginal community and supported. And even provided by the Aboriginal community, if necessary.

This court's also heard in relation to Aboriginal candidates for employment within NT Police enrolled, such as an Aboriginal liaison officer having a requirement to be someone that does have standing in their community and is from that community. Taking into account some of the issues we discussed earlier, systemic racism, what (inaudible) comparing of that present – there is a requirement for Aboriginal people to have some sort of endorsement from their community if they want to work in that role for the police, but non-Aboriginal people don't have that sort of requirement? ---I think that is an example where the power sits in the system. And if Aboriginal liaison officers and ACPOs need endorsement from the Aboriginal community, why would you not apply it the other way around.

On a similar point, we've heard evidence about the disparity or difference between pay and salary, some of the conditions of ACPOs and ALOs as opposed to general duties or non-Aboriginal police officers. Do you have any comment on that?---I don't have enough information to be able to distinguish between those two, the pay or the salary or - - -

Does it concern you that ACPOs, for example, who perform similar roles as general duties police officers are paid less than general duties officers?---Without doubt. I don't think you can operate in an Aboriginal community without a level of expertise and professionalism that sits with the role that is of an ACPO. They are critical if you want to deliver – if you want to work in an Aboriginal community.

So we've heard evidence from many people, including Dr Chilvers who described a therapeutic way and a culturally appropriate way of dealing with the arrest of an Aboriginal person and (inaudible) she was commenting on her knowledge of working, counselling, etcetera (inaudible). She heard evidence of the interactions

with one of the ACPOs from the community, Mr Derek Williams and she described his approach to how he'd arrested him in the past as a therapeutic and trauma informed way of dealing with a young person. Your experience as an officer or (inaudible) on the Aboriginal Justice Agreement, what's your view on the value of that sort of trauma informed culturally appropriate response to policing?---I think the role that ACPO, as I said, is absolutely critical to work well alongside, if necessary, other police officers. They have language skills, they understand the culture. They understand some of the boundaries of how to operate well with people. They have knowledge, daily knowledge of our individuals in their community that's critical to ensure that people are taken into custody, as you've described, that Derek Walker has had in the past with Mr Kumanjayi Walker.

THE CORONER: Can I ask, is it possible for an ACPO to carry all that knowledge and connection with community and at the same time without behaving inappropriately towards the community in respect of that relationship, to hold confidential information?---That goes back to the training of the ACPO and what training they have and experience. I understand Mr Williams is a senior ACPO and that's why you need to work with ACPOs alongside the other police officers so that when there is a conflict or when there is an issue, he becomes your information source for you to ask the questions that you may want to know that may result in more information being known about a particular situation or a person that will assist you in doing your job better as a police officer.

Sure. But in this case we've heard some evidence – and I'm not asking you to speak for the ACPO in particular but more about the – that conflict of interest – and excuse my ignorance as well, but I'm trying to understand, because it's a real question for tis inquest. Is it possible when there are those deep-seated relationships and obligations as a member of the community, to still maintain confidentiality or are there circumstances where it is appropriate, in your view, that information is withheld because of that conflict? Or is it a matter of training?---I think it's a matter of trust and you allow the ACPO to make that decision as to whether they have a conflict or not and how – and then you work together of how that should be managed, if it is present. You can't, I think, just – believing that an ACPO can't hold confidential information or isn't going to be trusted to do that is a trait that's unfair and unreasonable and discriminatory. There are circumstances where the ACPOs will face situations where they will need to remove themselves from situations because of that conflict. But if you work well with your ACPO or if you have a good relationship with that ACPO, then they will tell you and advise you in a way that you can go to plan B, if that's in the heat of the moment that that happens. I think it has a lot to do with how your relationship is with those ACPOs in the community.

And just coming back to the circumstances in this case, it was a very stressful scenario and it was – and there were difficult lines of communication. But with the benefit of hindsight, a conversation along the lines of obviously we have a critically injured person in our police station, would you like to be – have the conversation, not make an assumption?---That's right.

Would you like to have – be informed as to his status or is that going to cause you difficulty?---That's correct. And that's assumptions, characteristics are a form of discrimination that leads to people making decisions based on prejudices and more. And the ACPOs that are employed understand that they will need to deal with specific issues and confidential information. But you need to allow that ACPO to be trusted with that, to make sure that they can perform their role, which is to assist you as a police officer in a community to do it better. So he wears, or she wears the same uniform as you. They're there to serve and protect. They do have specific skills and talents that you may not have as a police officer, but that's when you ask them the questions that you doubt and allow them to speak for themselves on – in regards to any information that you are aware of. It's not right to withhold information based on assumptions.

MR ESPIE: Perhaps just on that point, also, many small towns in the Territory, you've also worked in regional South Australia. Non-Aboriginal police officers no doubt have situations working in small towns where they may know somebody personally that they deal with. It's the same situation, isn't it, that it's – wearing that uniform you've sworn an oath, you should be trusted to make that judgment or that assessment as to your level of involvement in a matter?---That's right. And that should form part of your training that you should be acutely aware when that conflict arises, raise that with your superior officers and then work out how to manage it. The very fact there is a conflict is not the issue. It's how that conflict is managed.

But employing ACPOs and generally speaking, Aboriginal people working in their own communities in policing and other things, the risk or the occasional challenges of where a conflict may occur, these are outweighed by the benefits that Aboriginal bring to those sorts of roles?---The Aboriginal police officers in the Northern Territory a ACPOs are highly skilled people. They bring to the table so much more tools in their toolkit. It would be foolish for police officers not to access those tools when they make decisions when working with Aboriginal people. At the end of the day, they wear the same uniform, they perform a specific role, but they are still part of the Northern Territory Police Force. So, when conflicts arise, the ACPOs should be part of any discussion around that. If decisions are to be made, they should be part of that discussion, they should be part of the decision-making process. And if they do raise a conflict, then that can be managed, but they should not be withheld information as a result of assumptions and characteristics that other people believe may cause pain or they should not be told because of their own judgments and prejudices.

And you've raised or expressed an observation or frustration in your statement about the lack of implementation of the Royal Commission recommendation into deaths in custody. Those implementations, as you pointed out, included things like the community policing model or community policing way of working. NAAJA is submitting that there's importance moving forward that police undertake the design – or the codesign along with the Aboriginal community of a community policing model that focusses on best practice policing relating with Aboriginal people, particularly in remote communities, and those differences as opposed to working in town and a town-based policing environment. Is that something - you are supportive of that

idea? And the second part of that question is whether there was a role in the Aboriginal Justice Agreement that could facilitate that approach?---I'm very supportive of community policing models I've seen - - -

Sure?--- - - - communities where relationships are very good with Aboriginal people and police, and how functioning and well those communities are. The role of the AJA, we are here to assist in any role and aspect that delivers better outcomes for Aboriginal Territorians in the justice system. We have access to people skills and more that are more than willing to do in this policing model space, if it aligns with the aims of the agreement.

Perhaps I'll come back to – the challenges for that would include – well, the challenges facilitating that through the AJA or through codesign and consultation in these Aboriginal community groups and the Elders' formalisation such as NAAJA and others, as is perhaps the challenges I'll ask you about in a minute, the sort of funding required to deliver that and ensure that it is – does involve the collaborative and COVID line of (inaudible). Is that something that is a challenge for the work of the AJA or is in accordance with the - - -?---My experience is, ask the community. Ask the community what they need and want and how they want community policing to be delivered in their community. Listen carefully to what Aboriginal people have to say and put that into any model in communities. Aboriginal people are more than willing to assist in this space if people ask the right questions and ask it in the right and respectful way. They don't want to have Aboriginal – their family members in front of the justice system as defendants or victims or witnesses. That's not the feedback – the feedback was, was that they did not want Aboriginal people embedded in the justice system as big as we have and increasingly as it is and looks like heading, unless we put a circuit breaker in place, which I say is the role of the AJA.

And another role in how the NT Police can function better and be more responsive to the Aboriginal community would be AJA's commitment to reviewing systemic racism in all government agencies. Is that correct?---That's correct. That's deliverable in the AJA. We will review every single Northern Territory government agency for systemic racism and its unfair, discriminatory impact on Aboriginal Territorians, including any service providers aligned with the agency.

And I think you've said, however, in your statement that the first agency being reviewed is in the Logistics, Planning and Development. Is that correct?---Yes.

And at what stage is that at? Has it commenced or is it - - -?---It's commenced, yes. And it's been completed. It was a partial review.

And is that the sort of information that would be published or would be available publicly?---That won't be my decision. That won't be my decision. That will be the governments committee's decision and the minister's decision at the end of the day.

Given - - -

THE CORONER: It would be helpful if those reviews or the learnings from those reviews at least were available, because of course hopefully other agencies could learn along the way and make changes?---Correct. I mean those reviews are not intended to be a witch hunt. They're actually intended to improve service delivery and improve the lives of Aboriginal Territorians and save taxpayers money, make communities safer, town safer. Like, the benefit is for all Territorians at the end of the day. People get uncomfortable when we talk about reviewing systemic racism, but they shouldn't because often it's not anyone's fault, it just sits within the system. It's not an individual's actions that has led to that, but they do need addressing, because of the history.

Perhaps a quick question on that point, when the police – given the evidence we've heard here, and NAAJA and others will no doubt make submissions on concerns around overt racism as well as systemic structure racism within the police, when the police be reviewed?---So police are on the list. It won't be my decision if they're prioritised or not. We're conscious that this Coronial was happening and we wouldn't want to compromise any recommendations that fall out of the Coronial that may duplicate itself in a review with the Northern Territory Police Force. They will be on the list and they- as I said, every single NT government agency and service providers, the service providers will be reviewed over the seven year lifespan of the AJA.

Some of the other concerns that seem apparent and certainly submissions were made on is the complaint process within NT Police, NAAJA has experienced, and also some of the evidence that's come out is that the complaints process is unwieldy, that there is some evidence that complaints administrative - the process could be better sitting outside of the police to avoid the police investigating police situation, which you've also pointed to in your statement. Further to that, there's often, in NAAJA's experience, an extremely long delay in inquest for information for complaints to be addressed. And you've raised the point in your statement that there will be reviews in relation to complaints processes?---Correct. That's deliverable in the AJA, as well as the review of the *Police Administration Act*.

And just touching on par 263 of your statement in relation to your (inaudible) around complaints, given NAAJA's also made – will be making submissions and providing affidavits and that relates to police complaints and that we've also – and willing to learn how to do things better. Is any way detailing what the issues are around third party, as you've suggested, contact from complainants who are third party and how that's causing delays?---So I understand that par 263 results in because often NAAJA lodges a complaint on behalf of the third party and then when police try to contact the complainant or go through NAAJA, then that creates unnecessary delays and then it becomes difficult to speak to the complainant directly or indirectly through NAAJA because of the geographical demographics of the Northern Territory and more. But also the inability to secure interpreters and more. So they're the issues that are being raised, more about the mechanics of how that process often delays and sits outside the ability in the *Police Administration Act* to meet the necessary timeframe of six months.

So you're not suggesting that be improved by not having people having, particularly in remote areas, having access to legal advice (inaudible)?---No, but I think the system can be improved in some way. And because we will be looking at complaints processes and improving the architecture around that and the mechanics around how that can be improved. Anything that can improve and expediate complaints or access to complainants so police can complete their complaint processes would be helpful for everybody.

Another action of the Aboriginal Justice Agreement, there's a review of legislation or what's described as unfair legislature. Is there, I suppose, to just detail that more, one might assume unfair includes the particularly targeting or discriminatory or having a substantial effect towards Aboriginal people, would you say?---Correct. So the wording is unfair, detrimental or discriminatory impact on Aboriginal Territorians.

And what's the timeframe for that review?---So for the legislation or for the agencies?

For a review of the legislation?---So we're currently reviewing the *Parole Act*, the *Bail Act* and the *Parole Bail* and there's one more – I have to have a look at the *AJA – Sentencing Act*. And as a result of that we've contracted a party to do that for us. That's being quite a lengthy process due to need to access data and have an evidence informed space. But that contract should be completed in the next two months or so.

I suppose one concern would be whilst this review is taking place in recent years, there is the law reform that arguably does substantially impact on Aboriginal people, in particular progressive reforms around bail and diversion for young people. Last year *Personals Injuries (inaudible) Damages Amendments Bill* that would see a cap on damages. But (inaudible) done to young people and adults in prison and detention. There's concerns public (inaudible) around a new bill amending the – to trespass that the – that would make it easier for people such as security guards and others to quite easily impose trespass notices on people, something that would particularly impact young Aboriginal people. I guess the concern is whilst there's this review taking place there are (inaudible) enacted and amended that do substantially affect Aboriginal people and will be considered unfair and detrimental. So I suppose the question is when do we see the benefits of this review and how is it that these sort of laws are still being created?---I can't answer that question for you. That's for the politicians to answer. All I can say is that reviewing those pieces of legislation will identify an evidence based approach the detrimental impact and the unfairness of those laws in its application which, you know, on its surface may look fair, but it delivers unfair, unequal outcomes for Aboriginal Territorians.

One way of influencing politicians is obviously things like an Aboriginal impact statement, that's another suggested action of the Aboriginal Justice Agreement. That's still an outstanding item?---So the decision to have a closing the gap statement aligned with any Cabinet decisions over – was taken over in preference to the Aboriginal impact statement. But we do on all Cabinet processes have a human rights impact statements as well which covers off areas of the International Declaration of Indigenous Peoples and any other convenience and law.

So in other words, does that mean the justice policy partnerships will all take place as to where the aim of an Aboriginal impact statement was going to be part of your (inaudible)?---So our – our Cabinet submissions we now have its impact on the closing the gap targets rather than an Aboriginal impact statement.

So in relation to the justice policy partnerships which is another framework of the legislative in relation to addressing the justice targets of closing the gap, the role of the justice agreement, how does that sit in relation to that? Does that respond to the justice policy partnerships?---So I'm the national rep for the Northern Territory Government on the justice partnership, policy partnership national body that represents the Northern Territory Government. That deals with outcomes 10 and 11. So obviously the AJA is a critical process that feeds into that and more.

As the national – that I understand is also the Local Northern Territory Justice Policy Partnership?---That's right. And that local JPP body, which I believe you're a member of now, has met on one occasion. And my information that I received from the national body will feed into the local body on outcomes 10 and 11.

That's something we can discuss further offline (inaudible). You've discussed the steering committee, I think you referred to it, governance committee of the Aboriginal Justice Agreement. Are you able to enlighten her Honour as to who is involved in that?---So on that committee key chief executive officers or equivalent for three government agencies, the Attorney-General's Department, the Northern Territory Police Force and the Department of Education and sorry, fourth one is Territory Families. Also on that committee are key NGOs, NAAJA, Aboriginal – the legal service. But there's – I'm trying to think of the numbers. But there's about 12 or 14 people who ensure that we keep delivering on the justice agreement and it doesn't lose any traction or pace or priority.

Just touching on whether you're familiar with the Victorian model, the Aboriginal Justice Agreement that has formed an Aboriginal Justice Corpus which consists of a number of Aboriginal representatives, including nine regional chairs as well as representatives from peak Victorian Aboriginal bodies and organisations, is there any view on broadening the (inaudible) Aboriginal people and for organisations?---Now that we've been rolling out the AJA for sometime – and I forgot to add that we have a philanthropist on all the AJA committee, Paul Ramsay Foundation. My preference to drive the AJA would be in the Aboriginal Justice Commission to establish that and report up through that that process, rather than create numerous government structures that consume a lot of secretariat work, but really don't get – and drive and roll out the deliverables on the ground.

So a Justice Commissioner could have that, a broader representation in regional areas?---It could. And it could broaden the roles, obviously, as I've explained earlier this morning in my evidence, around advising government agencies on – with independent advice or greater advice on issues that may be considered sensitive or policy reform, or so forth. But obviously until that happens, the AJU would perform that role, and continues to perform that role with other agencies.

In relation to funding, I understand just from looking on your website, the first year of operation, which I think was maybe a year or two ago, you received \$4.25m. Is there ongoing investment, and perhaps just touching on that, there is investment from Paul Ramsey (?). I understand there's investment from land councils on Groote Eylandt, the land council and the community trust in relation to some of the actions. And I guess the question is, how – how challenging is it, without additional resources from the government, to deliver on some of the – some of the things that the AJA's trying to achieve?---Well I mean, bidding for money in government's a competitive process. And it happens every four years. We've got backing of some considerable supporters, and we've got ability, and good partnerships with land councils, particular Anindilyakwa Land Council, who provided us with significant amounts of their royalty money to build that alternative custody on Groote Eylandt. If I'm being perfectly frank, it's not the money that will drive the Justice Agreement, or fail the Justice Agreement. It's the pace and the purpose to be backed by government that will stop us achieving our goals.

Sorry - - -

DR DWYER: I'm not rushing my learned friend, I just know that Ms Liddle's been in the witness box for two hours. So I wonder if would be appropriate to take a short morning tea break?

THE CORONER: Well, how long do you have to go, Mr Espie, because we've got a number of other people who need to ask questions as well?

MR ESPIE: Perhaps five or ten minutes, your Honour.

THE CORONER: I'll give you five.

MR ESPIE: All right.

Perhaps just quickly on that point, I'm sure I'll be corrected if I was wrong, Deputy Commissioner Smalpage suggested \$500m ought to fix a lot of the issues in Northern Territory Police. Do you think the money would better be – or do you think those sort of funds would be better invested in some of the strategies that you're trying to deliver through the Aboriginal Justice Agreement?

DR FRECKLETON: Your Honour, that doesn't quite characterise what was said by the Deputy Commissioner accurately. (Inaudible) in relation to infrastructure deficits and (inaudible) over a period of time.

MR ESPIE: So that corrects my reference. But broadly speaking, and rightly so, the Aboriginal Justice Agreement is ambitious and sets out a lot of things that could be delivered, rather than investing in front line policing, or in further policing?---So the AJA's really justice reinvestment at its heart. So creating safer communities will mean that you need less policing, or infrastructure, if you allow Aboriginal people to lead in the way that they want to lead.

And perhaps just on a final thing, this court's heard evidence, both here in Alice Springs, and also at Yuendumu Community, from people involved in Southern Kurdiji, it's been describing it by some, who have been working (inaudible) including as you said, mediation and (inaudible) and other things. Is it – is it something that the Aboriginal Justice Agreement would still like to do as – that is, engage further with – with those members of that group?---Once the law and justice groups, or cultural leadership group, or whatever name it takes, is established in Yuendumu, those discussions will be had with the community in conjunction with government agencies then, to decide what roles each party may perform best, according to their skill set or need.

Right, but you'd agree that it's important that if there is a such a group that their work's not – not duplicated or overshadowed by additional roles of law and justice group?---That's right. If it's – if groups, like any other deliverable in the Aboriginal community, if their achieve their outcome, and they meet the needs of the Aboriginal community, and you know, as I've said before, the KPIs need to build, new KPIs need to be built into those contracts or arrangements, then the community needs to have an ability to feed into that process and make those decisions.

And may be just – just the final question, you referred to aspects of the Aboriginal Justice Agreement being cherry picked, as to what was delivered. Are you able to share where that concern comes from?---Can you just repeat the question?

You discussed some of the challenges in delivering the Aboriginal Justice Agreement, which is some of the imitatives were being cherry picked, I assumed by others in government, as to what was implemented?---Cherry picked as in, probably the prioritisation, in more ways than anything else. Certainly everything that we were able to have evidence on that was needed, has been put into the Agreement. The prioritisation – the prioritisation of the deliverables and the amount of money aligned to that is outside of my pay level.

Thank you.

Nothing further, your Honour.

THE CORONER: All right, we'll take the morning tea adjournment. Are you able to come back, Ms Liddle, after morning tea and continue, thanks?

WITNESS WITHDREW

ADJOURNED

RESUMED

LEANNE LIDDLE:

DR DWYER: Your Honour, just before we continue, might I note that I've been formally tendered a statement of Leanne Liddle. I should have done that earlier.

THE CORONER: Thank you.

DR DWYER: And that will form part of our brief at 10-10C, which is the section where our expert statements is.

THE CORONER: Thank you.

Yes, thank you, Mr McMahon.

MR MCMAHON: Yes, thank you, your Honour.

XXN BY MR MCMAHON:

MR MCMAHON: Ms Liddle, my name's McMahon, and I act for the Parumpara Committee of Yuendumu. Which I'm sure you know is a group focused on justice for Yuendumu?---Mm mm.

And it broader sense, for the purpose of this inquest, focused on broader issues. Many which you've addressed in your statement. And I won't be rehearsing what's already been done in court. But if I can take you – do you have your statement in front of you?---I do.

Could I take you to page 5, par 16. Dr Dwyer briefly took you there, but she had many things to cover, and I'm not going to cover many things with you. At the top of page 5, in considering the Intervention, and the consequences of the Intervention, you note that "Since Intervention, incarceration rates in the Northern Territory have doubled for Aboriginal men, tripled for Aboriginal women, and that suicide rates have increased in the area of six-fold." So those are obviously catastrophic – catastrophically bad statistics. And can I suggest that really, that the data that you're revealing there, is a brutal insight into what's happened with the interaction of the Aboriginal community and the justice system, since intervention?---Yes.

Yes. Because the data is the message. Do you agree that it shows persistent failure, I might be wrong, I'm just putting this to you that the – when we look at the graphs of the data that you've suggested, the – the shocking increases in those numbers, whatever anybody says about what they're doing, what it in fact reveals, is a persistent failure in understanding by government policy makers, the justice system as a whole, in addressing those issues which lead to more gaoling?---I think the statistics alone, show a picture, but when you combine them with other evidence from Coronial inquests and you combine them with testimony of Aboriginal people

who we capture that content for the Justice Agreement, they paint a picture rather than just the statistics of what we need to actually tackle. So whilst the Intervention is one area responsible for it, it's not the only issue that was responsible.

Absolutely. So it's not the only cause. But it's really the timeframe I think that the Intervention is a convenient hook to give a timeframe and in your statement that paragraph you say will – and this timeframe, these statistics reveal a shocking deterioration in the welfare of the Aboriginal people of the Northern Territory when viewed through the prism of the justice system and that data?---That's correct. The data is very clear that the incarceration rate has doubled, tripled for women and that Aboriginal suicide rates, especially for youths, have increased six-fold.

And would you agree that insofar as I've already put that that data reveals a persistent failure to have sufficient insight into the causes of the problems leading to more gaoling, would you agree that there seems to be an absence – pardon me, I'll rephrase that. Would you agree that the data suggests an absence of evidence-based reform? To put that another way, if the reforms were more evidenced based, according to many of these matters that you've already raised in your statement, we'd expect the data not to be showing such rapid deterioration but at least some improvement?---That's right. But – what we – what we recognised and what our experts told us when we were capturing the content that's outlined in the pathways document, data alone only presents one part of the story.

Undoubtedly. You refer many times – I won't take you to particular places – but you refer many times in your statement to the super shires, as you called them, and would you agree that a fair summary of the way you've analysed and discussed the super shires is that it's a fairly damning analysis by you as to the effect that they've had on remote communities?---Yeah. People told us that the shires disengage any relationship with Aboriginal people in the community. They had no control and it disenfranchised them from any accountability or responsibility for anything within their communities.

So you'd agree that if policy makers and government were listening to the community that they would see that there was a need to rethink the super shires and how they worked vis a vis the remote communities?---Yes. That was definitely the messaging we got from the consults.

And part of the message you got was that a consequence of the creation of the super shires is that critical matters such as decision making, employment powers, having control over quality of life matters such as broken windows, broken toilets and those small but essential matters to quality of life, the community is saying that those things need to be – and I'm of course talking about the Yuendumu community, but you're talking about many communities – those communities that are saying that those matters need to be returned to the local level of decision making?---That's right. And if I can give you one example that was told to me on the consults. A lot of the communities once had football ovals that were watered, because the community council watered and paid for the water bill. When the shires took over a lot of the shires did not pay for the water bill. That meant that their football and netball and

basketball or any sporting activity that was in that community was no longer occurring. Those football matches weren't just about playing football. They were where disputes got negotiated, conciliated, collaborated, where families discussed issues around child protection and kinship care and more. So that type of information and knowledge of the impact of something as simple as not paying the water bill to make the grass grow on an oval in the community, feeds down into a system that has far more significant consequences than a decision that's made whether you pay the water bill or not.

And it's precisely the sort of deep insight which would be obvious to a locally controlled community?---Exactly. And that was exactly what communities said was missing. Those decisions were dismissed by other people who held the decision power and community had no way of feeding into that process.

And in fact going far beyond the Aboriginal community, you may be aware that in the drought in eastern Australia in the first decade of this century, many towns which were almost starved of water nevertheless would water the football oval and the sporting facilities so that the community could meet and have a living community despite the hardship of the drought?---That's right.

Can I take you to par 230 of your statement? I may just have misunderstood. You've already been asked a bit about this. I just may have misunderstood and I just want to give you an opportunity to clarify for the benefit of us. You say there at par 230 that you'd been advised that the Law and Justice Groups will be delivered by the Department of the Chief Minister's Office and it's unclear what the AJA's role is in delivering that. And then I think in answer to some questions, perhaps when her Honour – there was a distinction between an AJU having a role in the cultural aspect of it and then the – some other entity – and I wasn't sure what was said there – have a role in the operational role?---No. So the Chief Minister's Office will deliver the operational component and the AJU, I've been told, will deliver the policy position.

Perhaps one impression that one gets from reading your statement, and correct me if I'm wrong, is that there seems to be a great deal of work done to a certain point and then it's almost like there's some kind of roadblock which isn't spelled out there. There seems to be a momentum, which you've described and a lot of work done to get these local law and justice groups up and running and yet, what one would expect to read further in your statement, which isn't there, is that and now look at them, here, there and everywhere. Now can you just – am I getting that wrong or is there something that needs to be elaborated there to show that there's – we've reached some kind of jam or roadblock which delays the implementation of all the work that you've done over a number of years in this area?---So there's a lot of work going behind the scenes with the Justice Agreement and most – fast paced position is the delivery of the alternatives to custody, which - - -

Could you just say that sentence again please?---So a lot of the work, while it looks that we've put the handbrake on the law and justice groups, we're only a very small team that's delivering and working with these communities. So a lot of energy is

being put into the alternatives to custody that we're driving and we'll deliver on soon because we've had so much success with the facility that we have here in Alice Springs with Aboriginal women and we're working with the Land Council on Groote Eylandt to deliver another one there. They take up a considerable amount of our time to deliver on those. I probably – there's a lot of work going on but it hasn't been outlined in my statement. That's what I have - - -

No, that's fine. I just wanted to make sure we understood?---Yes.

The point that you were making there.

THE CORONER: And as an aside, where are you up to with the alternatives to custody on Groote Eylandt?---So a lot of work has been put in place. We have the law and justice group there and obviously the law and justice group will get a community court. And we will be – that facility for Aboriginal men aged 18 to 25 will be operational mid this year.

MR MCMAHON: Can I take you to page 84 of your statement.

THE CORONER: And more specifically - - -

MR MCMAHON: Sorry, your Honour.

THE CORONER: Sorry to interrupt.

More specifically for the purposes of this inquest, is it available for – as an alternative to custody for that age group across the Territory or is it Top End only or is that – is there still decisions being made in that area?---So there's still decisions being made through the Law and Justice Group as to the criteria for eligibility into that facility. It's – at this stage, the age criteria has been extended to include younger people. There is sufficient numbers in the Groote Eylandt community to ensure that that facility gets – is at capacity when we roll it out in July.

Now, if I can take you to page 84 of your statement, please?---Page 84 or paragraph?

Page 84. So this is a long paragraph where you talk about recommendations to the coroner that would prevent future deaths. And as you appreciate, I'm sure, the – one of our purposes here at the Parumpara Committee is to point out that many of the surrounding circumstances in the community and in the history of the community are relevant to how this shooting came about. Now, at the top of page 84 in the second dot point, you mention an Aboriginal Justice Commission which you developed earlier, and I won't take you there, but you talk about what we might say is the weakness in the system, where there are allegations of police misconduct against Aboriginal people being investigated by the police. Now, we will be submitting later to her Honour that the evidence that we've heard in this inquest reveals that there are substantial failings in the process of police investigating police, and that really quite radical change is needed to deal with the issue of assessing allegations of

police violence against Aboriginal people. Is that something you'd like to comment on in light of the dot point that you've made there? When I say, "like", is that something you're able to comment on in terms of your work? It seems from reading your long statement that you've had a lot of interaction and worked with the police at various levels at various times, and I told you what our submissions are going to be to her Honour, is that something you're able to assist with?---As part of our research and part of the consultation, it was very clear that Aboriginal people felt that it was inappropriate for police to investigate allegations that Aboriginal people had laid without appropriate training and knowledge of how Aboriginal people felt and the recognition of racism in all its forms in systems, particularly systemic racism in structures from police, health, education; you name it. People felt they weren't getting a fair, transparent process if police were investigating police.

That's the information that you gathered over - - -?---Three years.

- - - not only three years, I suspect, but really - - -?---Three decades.

- - - given your CV and the kind of work you've done, you would have heard a lot about that over your life. But in particular, you've had a very focussed three years in dealing with so many Aboriginal communities, and that's a message that you've heard. Do you have – it's appropriate, I think, to ask you to explain, if you can, what solutions you see to that? What we see in this court, which you probably might have seen a little bit of in the media, are numerous videos of unacceptable violence and so on, and we've heard quite a bit of evidence recently about how that was dealt, and we will be submitting that the evidence reveals that it's being dealt with unsatisfactorily. How do you see – what sort of solutions do you see for that in terms of how to manage that problem, bearing in mind that the government has said in numerous key documents which we're aware of in this inquest, including the Aboriginal Justice Agreement and (inaudible) to listen to the community?---I think, unless you have an Aboriginal person inside the complaint system that can articulate the impact and the pain and suffering, or the feelings of Aboriginal people to that complaint and their voice is heard, then you are missing the ability for Aboriginal people when they lodge complaints to completely feel that they've been listened to and that the matter has been satisfactorily resolved.

So as a generalisation, and I know it's not always true, but as a generalisation, it seems clear to an outsider such as myself, which is what I am, that NAAJA are often involved in assisting Aboriginal people to put forward the complaint, so that at that level, the connection to community is obviously strong. But at the next level, you would urge, and I don't want to put words in your mouth, but you would urge, I suggest, that there be a strong Aboriginal presence in the review process in the consideration of the allegation?---Correct. And that's why I suggest that the Aboriginal Justice Commission perform that role, because understanding the impact on Aboriginal people as a result of those allegations is important given the power and privilege that a lot of the systems have that interact with Aboriginal people.

And can I suggest that, from what you said, you would agree that regardless of whether or not the Aboriginal Justice Commission have a role, because whatever

recommendations her Honour makes, some may and some may not be implemented, but regardless of that, you would agree that if there were to be a much greater involvement of Aboriginal people in the review process, that should certainly not be confined to people who are Aboriginal police officers. You would agree with that?---Absolutely.

And it could involve people who were, for instance, Aboriginal lawyers or experts in - Aboriginal workers in social welfare or other areas of leadership within the Aboriginal community?---Correct. That would be the intention of how, whatever process through the Aboriginal Justice Commission, how that would fall out and play out that, you know, that complaints would be part of that process so that they were independently assessed, or there was advice provided to any current process that feeds into complaint systems.

As the court pleases.

THE CORONER: Thank you. Other questions? Don't be shy. Sorry, your name again is?

MR HEARN: Hearn.

THE CORONER: Hearn. Thanks, Mr Hearn.

XXN BY MR HEARN:

MR HEARN: My name is Hearn, and I am the solicitor representing the Walker, Lane and Robertson families and in the benefit of the questions that my friends have asked, I've just got one or two questions to ask you. We've heard a lot of evidence in this inquest about the reforms that the Northern Territory Police Force have either in development or in the early implementation phase, they've been described at point in the material as a wholesale review of all the practices and procedures, general orders, standard operating procedures and instructions. Accepting that the result in changes to policy is going to have wide-ranging effects for Aboriginal people interacting with police and the communities in which they live, and the relationship that those communities have with the police, do you have any view as to what an ideal model for consultation would look like when we're talking about the development of police and reforms on a scale?---At its bare minimum, you would want Aboriginal people involved.

At what stage and in what - - -?---At every stage. If it impacts on Aboriginal people and it causes - and those reforms, given the statistics that we have in the justice system and the level of interaction that these reforms and so forth have with police, you would expect Aboriginal people to be engaged in every part of that process.

Including in the prioritisation of the areas in which reform is to be directed and addressed?---Are you referring to the list of reforms that I've seen in the statement?

Yes?---So, they're significant reforms and from what I understand, there are a lot of

areas that still need attention in that. The process of consultation to do that, I think has been outlined in previous recommendations from the Royal Commission into Aboriginal Deaths in Custody, to just – knowing how to relate and conduct consultations with Aboriginal people well.

Do you see that the process of consultation in this process of reform has followed those recommendations?---I haven't been contacted, or involved in those processes, except for the Gally – Gelliot paper review issue.

Did you know how the Northern Territory Police Force is informing itself as to matters that affect the Aboriginal community and the – in the development of their new policies?---No I do not.

In the position that you hold, and with your experience, would that be something that you would expect to be aware of?---I think that would be one of the first places you would come to, was to speak to us, given our most comprehensive consultation process. But also for us to give you – give other agencies advice on how to consult appropriately.

And has that – I take it that contact has not been forthcoming?---Only in the Gelliot paper.

And in your role as the Director of the Aboriginal Justice Unit, you would be able to facilitate that engagement and consultation for the benefit of the Northern Territory Police Force in the development of its policy going forward?---We would be happy to cooperate with the Northern Territory Police Force in that process. There would be some conditions around the employment of cultural brokers, interpreters, and how we would work with Aboriginal communities in that process, that we'd need to agree on.

Thank you.

THE CORONER: Thank you.

Any other questions?

DR FRECKLETON: I do, your Honour.

THE CORONER: Sorry - - -

MR ZICHY-WOINARSKI: I'm not sure if Dr Freckleton have any questions.

THE CORONER: Mr Zichy-Woinarski.

XXN BY MR ZICHY-WOINARSKI:

MR ZICHY-WOINARSKI: Ms Liddle, my name's Zichy-Woinarski, I act for NT Health?---Good morning.

You said there were two rounds of consultations for the Aboriginal Justice Agreement?---Mm mm.

What's the purpose of the first round of consultation?---The first round was to capture the content. And then we had a – that was a first lot of communities that we consulted with, and then we moved into the second phase. But the first phase dealt with the content for the draft Agreement. Which then allowed for the submissions to feed into that process, and then we completed it with the second round.

And over what period of time did that first consultations take place?---The – I couldn't tell you exactly, but it would be over a year and a bit.

Was Yuendumu consulted at all in the first round of consultations?---Not in the first round, no.

I might just take you to the document, 20-5 on the brief, Pathways to Community Control?---What – what paragraph?

It's – sorry, not yours, not in your statement?---Oh but - - -

A PERSON UNKNOWN: (Inaudible)?---The pathways?

MR ZICHY-WOINARSKI: Yes?---Yes.

You've got a copy there?---I've got a copy.

Page 17?---Seventeen. Yes.

A list of consultations for the draft Northern Territory Aboriginal Justice Agreement. And then over the following page, about eight or so from the bottom. It seems to record a consultation, Yuendumu on 16 August 2018?---You must be looking at a different document. I – the Pathways is the 1.7.

That's the version on your screen, if you go to page 6?---Oh no that's an appendix.

Yes. Sorry, 100 – my mistake, 117?---117.

Page 117?---Is it, yes I can see that.

THE CORONER: It's called the Pathways document.

MR ZICHY-WOINARSKI: The Pathways document?---Yes, got that.

So that's the appendix?---Mm mm.

And over the following page, about 10 or so from the bottom?---Yes.

Upper Tanami, Yuendumu - - - ?---Mm mm.

- - - 16 August 2018?---Mm mm.

Would that have been a consultation in the first round or the second?---The second.

And was there a register of the – of the consultations that occurred in that second round?---Yes there is.

And that register is not Cabinet in Confidence?---No that one's not I believe.

And that second round of consultations was to refine the draft Aboriginal Justice Agreement?---To continue some of the communities who wanted us back, but also to go visit communities we hadn't visited before, but it was just a continuation of what we had captured in workshops that we had held with government and so forth, just following or feeding into the content for a final agreement.

In your statement, you also refer to the consultation you had (inaudible)2020?
---2020.

Was that also (inaudible) part of the second agreement?---2020. No the – I think the agreement was written by then. We had gone back into communities to – to close the loop, to tell communities what we had developed, and what we did with their information.

And so what was the purpose of that? Was that a third round of consultations?---No, they – that was information to advise community what we had done, and what we had done with their content, and where it had landed in a final agreement.

So less a consultation and more a (inaudible)?---A closing the loop on what had – you know, what we had done with the – with their information and content.

And how (inaudible) to develop a - - - ?---Correct.

Thank you.

THE CORONER: Dr Freckleton.

DR FRECKLETON: Thank you, your Honour.

XXN BY DR FRECKLETON:

DR FRECKLETON: Ms Liddle, my name's Ian Freckleton and I'm appearing for Northern Territory Police?---How are you.

I take it from something you've said already, that you've attempted to read, or at least review briefly, the statement that Deputy Commissioner Smalpage made this year?---Yes, I've read some of that information.

Employment of Aboriginal people throughout the public service is not as high as you and many others would want, so far, is that right?---That's correct, yes.

None the less, you would have seen from the statement of the Deputy Commissioner, that some 279, about 11.4 percent of the work force of the Northern Territory Police and Emergency Services are Aboriginal, (inaudible) Aboriginal?

DR DWYER: Which affidavit?

DR FRECKLETON: Beg your pardon?

A PERSON UNKNOWN: (Inaudible) the witness has seen any of those statements. All she's seen is (inaudible) which is a summary of (inaudible).

THE CORONER: Okay.

DR FRECKLETON: (Inaudible). Well she said that that's a (inaudible), that's all right.

Let me – let me tell you what's in there if you haven't had a chance to see it. So let's go back to what I was saying to you. Some 200 – there are 279 also Aboriginal people and Torres Strait Islanders, who are employed by the Northern Territory Police Fire and Emergency Services. Namely, 11.4 percent of the work force. How does that compare to other parts of the public service? Do you know?---No I wouldn't be able to tell you off the top of my head, no.

The understanding of the Deputy Commissioner is that that – that is not exceeded anywhere else in the public service. You can't say anything about that?---Well what I would have to say is that given the interaction of the number of Aboriginal people engaged in the justice system, one would anticipate even a higher level of engagement and employment of Aboriginal people, given that the interaction is so high. And I would also say that given the interaction of Aboriginal people in the Northern Territory Police Force, I would expect that spread of that 11.4 percent to be across all ranks and seniority positions within the police force, to reflect, and congratulate the police force on that number.

You would accept presumably though, that reaching those kinds of aspirational targets is something that inevitably is going to take some time?---No I don't think so. I think that is where the issue of systems and systemic racism tackles issues that address the low level of Aboriginal people when we're so embedded in the justice system. I believe that change in those systems will improve Aboriginal employment and retention rates of Aboriginal people in the Northern Territory Police Force.

At this stage perhaps unsurprisingly, the majority of Aboriginal and Torres Strait Islander sworn police officers are constables for some 91 of those. It's going to take a little while (inaudible) based on your own experience in the South Australian Force for those persons to make their way up through the ranks to become

superintendents and assistant commissioners and so on?---I think the police force has been around a long time and for me, even when I was in the South Australian Police Force, there were opportunities available to me to get up in the ranks. I go back to the issue that given the amount of interaction and the number of Aboriginal people that would be willing to join the police force, I would have expected at least there to be Aboriginal commissioned officers for several commissioned officers who are Aboriginal in the Northern Territory Police Force.

So what rank did you reach yourself?---Senior constable.

And you were in the South Australian Police Force for how long?---Ten years.

It takes time to go up the ranks in any police force, doesn't it? So what you're looking for is opportunities to perhaps expedite promotions for those who have the necessary skills and aptitudes?---Well I think there's two things at play here. One is the attractiveness of the police force as a place where Aboriginal people want to work. So I go back to systems and the ability to change systems to make them attractive for Aboriginal people to be employed in the police force. So it does take time but ever since I've been a child growing up here in the Northern Territory and I'm now in my late 50s, well early 50s - - -

(inaudible) in your early 50s?---I'm in my early 50s.

Yes?---I'm yet to see an Aboriginal commissioned officer that I know of in the Northern Territory Police Force. I think we can do better than that.

Absolutely. There are a number of challenges to persuading members of the Aboriginal and Torres Strait Islander community to join the police force, including the difficulties – I'm using a neutral word, but the many bad experiences that (inaudible). And also including an extensive period of training in Darwin that's required for police officers. I'm informed by my client that that's proved to be a logistical impediment so far to encouraging large numbers of indigenous persons to join the police force. Would you be able to comment on that?---I think it goes back to when I was asked in the very early piece of my evidence that understanding Aboriginal people's connection and interaction with police plays a role. But I think – I don't see them as challenges if you address them and you acknowledge them and you deal with them and tackle with them. And unfortunately one of those issues has to be the structures and the systems that create barriers to Aboriginal people joining the police force. And one of those barriers that I personally experience would have to be – and I can illustrate to you some of the areas are around structural racism in the systems. And the police force is not alone in this, I have to say. This is not a standalone issue for the Northern Territory Police Force.

Thank you. You've been very clear about that. And if consulted by the Northern Territory Police Force you'd be prepared to work with them to formulate strategies for employing more indigenous persons?---That would be part of the review process as we deliver the review of every government agency, to look at employment retention and you know, in getting Aboriginal people up into senior ranks and more.

You probably heard from the reporting of the information that's been provided to you, that the system in the Territory for having Aboriginal Liaison Officers has only existed for two or three years now, but there are some 50 who have been employed and the hope is to employ a considerable amount more. You'd be positive about that strategy, I take it?---Certainly positive. But the decision making occurs in those higher ranks and I just want to make the point that you can employ lower level employees in a system but if we're not at the table to make the decisions and provide the contribution given our interaction and over representation of Aboriginal people in the justice system, then where is that conversation coming from and where is that information and knowledge coming from to inform the senior ranks and Aboriginal issues, let alone how Aboriginal people need to be engaged and employed and retained in the Northern Territory Police Force.

Yes. However, you, for instance, have spent three distinguished decades in contributing and learning about the system and even yourself wouldn't have been able to contribute in the way that you can now when you were in your 20s or your early 30s, would you?---I think I could have been a lot higher up in my ranks by the time I left if the system supported me, yes.

So would you accept this. That a constructive strategy is that which being deployed by the Northern Territory Police Force to bring in as many as ALOs as possible to facilitate them moving into becoming ACPOs and after that, encouraging them and facilitating they're becoming sworn members. In other words, the - - -?---Look, I think - - -

- - - (inaudible)?---Like I've been around the block a bit in terms of the justice system. I've been around the block in many agencies to see employment strategies. And I get quite annoyed when this – when people try to attract Aboriginal people at the lower ranks. We have intelligence, smart, capable, Aboriginal people that could walk straight into commissioned roles in the police force if the system support that.

Without having any background in policing at all, you're contemplating persons coming in at superintendent level?---I think there needs to be a mentoring type program or – I mean other police forces across the nation have significant Aboriginal people in their commissioned officers roles. I think there's lessons to be learnt there. I go back and say you can put as much effort as you like into ACPOs, ALOs and then junior officers. But my knowledge and my history in the police force tells me that the decisions that need to be made that will create a different environment and a different culture in the police force happens in those commissioned ranks.

Absolutely?---And that's where you need the Aboriginal people.

No argument there. But would you accept that there would be some informational and experiential challenges in lateral recruitment for persons from within the Territory who have had no experience as a constable, a sergeant, a senior sergeant, etcetera, up into the commissioned ranks?---Yes, that's correct. Yes.

Let me move to another issue then. You've admitted the idea of an Aboriginal Justice Commission having the role in relation to complaints made by Aboriginal people about the conduct of police officers. You'd be familiar generally with the role already in the Professional Standards Command, that's the Ombudsman's Office. Can you say a little more to her Honour about how you would see the Aboriginal Justice Commission locking into the system which exists at the moment? Or do you have in mind a complete reformulation (inaudible)?---Yes, I think there needs to be a complete reformation. I think that there needs to be a system that actually meets the needs of Aboriginal Territorians. And I think we need a system that actually reflects Aboriginal people's issues and that there's Aboriginal people there assessing some of those complaints and then feeding either – what the architecture of that looks like, what the mechanics is, look, I mean – but all I know at the moment is that the ability for Aboriginal people to feel like they've been heard and be satisfied that their complaints are being dealt with, given their background, given their feelings, hasn't been expressed to us in the consultation process.

Can you see an advantage in serious complaints being rigorously investigated by police officers who have coercive powers and backgrounds as detectives in investigating?---Are you talking about complaints about - - -

Seriousness – about for instance, excessive use of force, where an injury's been sustained?---No I still think they need to be led by Aboriginal – an Aboriginal entity of some sort and - - -

External to the police?---External to the police. And the police can feed into that process, which is a complete redesign of the model that's on – that's currently in place.

Are you aware of that kind of model having been implemented anywhere else (inaudible)?---I know that that's been the recommendations from Royal Commissions and more, that have never been implemented.

So you're not aware of anywhere else where that kind of model has been implemented yet?---Not that I'm aware of, but I haven't researched that area.

At any rate, as you know, the Gelliot report is now being reflected upon internally within the police force, and there's going to be an extensive period of consultation. You'd be prepared to participate in that, and share your perspectives and your insights?---Absolutely. I do note that report did not deal with systemic racism, which was I think a missed opportunity, or a misinterpreted opportunity. I'm not sure which it was, but at the end of the day, I think there's a lot of areas of reform that need to be added to that list that I've seen that need not to tackle issues like cultural awareness programs, and cultural competency, given that evidence and best practices that says that they have little impact on changing people's behaviours.

And that's one of - - - ?---And attitudes.

- - - the (inaudible) you'd be prepared to make to the reform process?---The AJU would be more than willing, giving the expertise in our team, to tackle that. But it would not be anything around cultural awareness programs.

Thank you very much for answering those questions.

THE CORONER: Mr Newhouse.

MR NEWHOUSE: Thank you.

XXN BY MR NEWHOUSE:

MR NEWHOUSE: Ms Liddle, there's a number of definitions floating around about what constitutes systemic racism. Mr Mullins took you to the HEREOC definition we make – we don't cavil with that at all. But with the UK definition, assist police understand systemic racism more clearly, in particular, the second part of the definition. Which appears in par 299 of your statement. And I'll read it out.

“Because there's a lot of people that don't appear to be able to see it. And this definition, which is used by UK Police says it can be seen or detected in processes, attitudes and behaviour, which amount to discrimination, through a written prejudice, ignorance, thoughtlessness, and racial stereotyping.”

Now my question to you is, do you think that gives better frame working for police, particularly non-Aboriginal police, to understand false assumptions, thoughtlessness, and how that might be systemic racism?---Yes I think that is probably the best definition that's relevant to any police force that I've seen.

Thank you. Now, I'm going to then take you to I think Mr Hearn raised the issue of the reforms, or changes to policing, in the Northern Territory. Which I understand is summarised in this as well.

Can the witness see a copy of (inaudible) please?

Now you've had a chance to look at that document, haven't you?---Briefly, yes.

Now you told Mr Hearn that neither you nor your team, were engaged by the Northern Territory Police in any of these changes, is that right? Other than - - - ?
---Other than - - -

- - - sorry, I withdraw that. Other than having input into Mr Galio's report?---Gelliot.

Gelliot?---Yes, which is – if – it moves further up, then I can see that. Is that it? No, (inaudible).

It's seven pages, but - - - ?---Yeah, so the Gelliot report is the only issue that I can recall that I've been engaged in.

And I think you told Mr Hearn, words to the effect that either your body, or another Aboriginal consultant body, should have had some role. Can you explain to her Honour why it's important for communities to have – Aboriginal communities to have some input in policies and policy change and reviews?---Because when policies are imposed on Aboriginal community that impact significantly on Aboriginal people, but we've had no input into it, it's difficult for us to a) understand its application, its alliance with any other decision that's being made, and we should be part of that process, because it impacts on us greatly, and we want to be in a – we want to participate and partner with government agencies. Because we can see what happens when that doesn't happen. And we need to be, because, particularly these areas of reform that are in that list, significantly impact on Aboriginal people, and our position to make community safe. To have a good relationship with community. And just to thrive in our communities, basically.

And - - -

THE CORONER: Can I ask a question. The Aboriginal Law and Justice Groups, or whatever name they end up having, are they routes that agencies can speak to about policies and changes to policies and development of policies and procedures?---Yeah, that is exactly one of the chore roles, so that there's no need then to engage consultants. The people on the law and justice groups would be language speakers. They would be able to navigate around cultural politics, and more. And they would be a constant on the ground that would be able to maintain and even manage and evaluate any policies that are being delivered from any government agency. So it could be as simple as we'd like to change the way we recruit people in our agency, as a government. And how does the community feel about having Aboriginal people on interview panels to select people working in our communities. That could go to the law and justice group to say the community's position is this, or it's this, but we'd like that.

Right. So given there are three groups currently operating, apart from your overriding agency, they are people on the ground, or groups on the ground, that could potentially be consulted? I know they're not in Yuendumu, but they are in three different locations?---That's right. And the AJU could support any agency in putting together a consultation process that would deliver input from Aboriginal community on any policy reform or more.

MR NEWHOUSE: Thank you, that's helpful. Just very briefly, do the changes that are reflected in that document that you've seen, briefly, reflect a feedback that you received from Aboriginal communities in the consultation?---No they don't. Not in the areas that Aboriginal people had identified that they'd like changes within the Northern Territory Police Force.

Well what might be missing?---The glaring absence of systemic – any attention to systemic racism. The glaring reliance on cultural awareness. The recruitment process of people in the Northern Territory Police Force. They are areas of reform that Aboriginal people just are a few of the many, but they would want to be involved in, according to the consultations.

And can you tell the Coroner how you feel, when you see policies rolled out, and changes rolled out, without consultation to you, or your group, or from the evidence that we've heard today, the commentary, any Indigenous – or Aboriginal consultative group. How does that make you feel?---I see this long list of policies and reform and change within the Northern Territory Police Force, and I'm – can't see any input from Aboriginal people that feeds into those reforms that will make it work, and yet we're key people in the justice system that will be impacted by the result of these policies, driven by Northern Territory Police Force, or any other reform that government agencies do. I feel like ACPO Derek Walker and the health workers who have been excluded from conversations that impact on us, and we have a level of expertise that could have assisted the parties to do a better job.

Thank you. So, just with that in mind, I suppose that leads to your par 299 on page 77 towards the end, it seems from the reforms that there is no reference at all to anti-racism policies, and you've quoted from the UK anti-racism policy that's implemented by the UK police who do acknowledge, and if you read that paragraph carefully, they do acknowledge that systemic racism exists. But I just want to take the last few sentences on page 77 starting with "This plan", and by "This plan", I want to make it clear that this is an anti-racism plan, "The work that flows from it is more than just tackling individuals who damage policing by their overt racism or just a necessity to recruit more black officers and staff, it's about looking at how policing works and challenging the policies, procedures, operations and cultures in policing where racism, bias and discrimination exists, so we can ensure that there's no longer a debate to be had on policing and institutional racism."

DR FRECKELTON: Your Honour, I would just like to correct potentially (inaudible) some of the bases for the question posed because, as your Honour has heard in the evidence that has been given, CREC which has Indigenous officers in it, has played a significant role in certain stages of performance which have been identified by my learned friend. And there are multiple components to attempts to change culture including in respect of racism within those certain (inaudible).

MR NEWHOUSE: That's an internal body, is it?

THE CORONER: It is - - -

DR FRECKELTON: Yes.

THE CORONER: - - - an internal body that's a commission or command that's been set up inside the police.

MR NEWHOUSE: So, they're reporting within a change of command. My reference was to independent consultative bodies. I don't think there's any need for clarification, but if you would like me to, I'm happy to do it. That is an internal organisation. I wasn't here when that evidence was given, but I think my point was clear that – and I asked the question if she or any other Indigenous, Aboriginal independent consultative body and I acknowledged that CREC was a consultant, but

they are within an organisation and I'm not sure what role they play.

But I want to just – there is – you would admit that there is no anti-racism policy, and I want to take you - - -

DR FRECKELTON: No. I wouldn't admit that there's no anti-racism policy.

MR NEWHOUSE: Okay, let's just - - -

DR FRECKELTON: No, no, that is utterly factually incorrect and her Honour has heard of that, of multiple efforts that have been made and the various orders that exist in relation to racism and the variety of Aboriginal culture-responsive behaviour. So, that's really something which cannot be led past.

MR NEWHOUSE: That's – please show her Honour, direct me and her Honour, to the formal anti-racism policy that takes the form of looking at how policing works, challenging the polices, procedures, operations and cultures in policing, the racism, bias and discrimination exists. The policies that you refer to are individual behavioural issues.

If you look at the definition, it can be seen or detected in processes, attitudes, behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racial stereotyping. There is no policy that refers specifically to that nature of systemic racism. If you could point it out to me, I'd like to see it.

DR FRECKELTON: I'm not (inaudible), Mr Newhouse. Her Honour - - -

MR NEWHOUSE: No, just sit down for a minute.

THE CORONER: He is sitting.

DR FRECKELTON: As her Honour knows - - -

THE CORONER: We've heard that there are efforts within the Northern Territory Police Force to identify racism to indicate that it is not in any way tolerated within the police service, and efforts to identify and address systemic racism as it exists in policies and procedures. But is there a separate general order, for example, a leading document like that that specifically deals with systemic racism.

MR NEWHOUSE: Thank you.

THE CORONER: Do you think there should be, Ms Liddle?---I think, given the history of the relationship that Aboriginal people have had from colonisation and the history that Aboriginal people have had with police and then our interaction so heavily embedded in the justice system with police, that would be the first port of call that I would do if I was in the police force tomorrow, to do an anti-racism policy. That would be one of the bare minimum issues that would address – because people – what people need to understand is that systemic racism isn't something that people

deliberately do and consciously do, it sits within the systems, and it has unfair outcomes. And they operate, quite often, independently until there is a crisis or an issue like this coronial that brings up the issue. And it creates environments that will attract aboriginal people to the police force. It creates a culture in systems that are attractive and for every employee in that agency. So I think an anti-racism campaign or strategy would be the bare minimum that I would want to see inside systems like the police force.

THE CORONER: And that could refer to safe mechanisms of reporting concerns - - -?---Complaints.

- - - about overt racism or if you've identified some form of system racism in policies or procedures?---Correct. And not just complaints, but structures that support behaviours that on the outset, individuals don't agree to, but they sit in there and they have to comply with that because the history has left it there or the system has left it unaddressed, but it impacts unfairly on Aboriginal people. It might be something as simple as a recruitment policy for people that doesn't take into account spent convictions for recruitment. It might mean that you need an employment strategy that attracts Aboriginal-commissioned officers, rather than the ACPO/ALO constable level. It creates an ability for everyone to create a better place for everyone to work with. It enables better consultation and relationships that address issues such as we've been talking about the need to return to those community policing models.

MR NEWHOUSE: I won't take that further, your Honour.

Have you heard of the Hollingsworth report?---Yes, I have.

Can you tell the coroner what's in that?---So, as part of the deliverable one to the Aboriginal Justice Agreement, we commissioned an anti-racism campaign which takes a whole government approach that identifies ways in which agencies, particularly those that impact on the justice system, can tackle racism inside systems and identify some areas of reform that people may not see as having any issue of discriminatory behaviour in it, but the outcome results in an unfair and unequal outcome. That report would have to be one of the best reports I've read on racism, particularly an anti-racism campaign.

Do you know if the police have a copy of that report?---The police are on our AJA governance committee, so they would have seen that report, and it is currently sitting within government processes for approval. But it has gone to the governance committee and we have a member of the commissioned police force – a commissioned police officer on that committee who would have been sent that report.

Right. And in your review of the table summarising the changes, MS12, can you see any evidence that those recommendations have been incorporated into the changes since the death of Kumanjaya Walker?---I can't see it but I'm unaware of what sits

behind those policies. We're unable to give you a definitive answer to say it's not included.

And would you say it was an oversight if it hasn't been included?---As I said before, I think an antiracism policy would be the bare minimum that I would want to be looking at to reform issues around the police force.

Would you agree it's difficult to see systemic racism without data?---Data is one way of validating evidence, whether systemic racism or whether any racism exists in a system.

So when reforms are being undertaken by senior command in the police force, do they have at their fingertips data on use of force by race, for example, or other critical statistics date and complaints based on race?---If I can remember when we were asking for that data to inform Professor Hollingsworth's report, I'm unaware – I'm pretty sure that data was not available by distinction – into categories of race.

So you would say that without accurate data it might be difficult for senior management to be alerted to and track systemic racism?---Well quite often without data you don't know what you're dealing with. So my position is no data is no defence. So at the end of the day unless you have an evidence based approach that feeds into it, an informed process that captures content that either validates or invalidates, supports or doesn't support a position, without that data it makes it difficult for you to know what's missing out of the picture.

And have you had at the AJA had difficulty getting extracted this kind of data?---Yes, we have for our consultants.

What sort of data might you be asking for?---It's in my statement there. We've had difficulty capturing any data on police cautions, police bail and the conditions why bail might have been refused or conditions of the bail and there's been other examples where we've had specific – we've asked for specific data on the use of the police caution in language and the difficulty we've had in securing data to identify areas that needed reform.

I'm going to take you now to Ms Gelliot's report. One of the recommendations in Ms Gelliot is an assistant commissioner with sole responsibility for professional standards. Do you have any comment on that recommendation?---It's difficult for me to speak on a recommendation without understanding the whole document and what's inside that document, also the policy. And I would need that before I could have a position on that.

Well who do you think should be overseeing professional standards?---Well I think when a – when an incident involves an Aboriginal person or an incident as a victim or it involves any use of force for Aboriginal people, at the very least there should be some input from – whether that be – which we haven't got in the Northern Territory Police Force, an Aboriginal commissioned officer or an independent body that feeds into that process.

The Deputy Commissioner accepted there are unsatisfactory delays in resolving complaints. Are you aware of those delays?---Yes, I am.

And are you aware that those delays if they take too long can mean that officers cannot be effectively disciplined?---Correct.

Is that something that the AJA is looking at making recommendations on?---When we review the *Police Administration Act* that no doubt will be an area that we will look at.

On 1 March the Coroner asked a question about community safety meetings at Yuendumu. What did the AJA consultations hear about community safety meetings?---The feedback from the consultations on community safety meetings was that only white people turned up to complaint about Aboriginal people. I was present at one of the consultations where I saw a policeman sitting under a rec hall and I asked what he was there for and he said the community said they were there to do this community safety meeting. But unfortunately no one turned up from the community to his meeting, they attended ours.

During his evidence the Deputy Commissioner said it would be extremely difficult to give police a prescriptive manual about induction into an Aboriginal community. Isn't that the role of an LJG?---Yes. And it's also the role of the ACPOs or ALOs to feed into that process. Because the generalisation of – and the cultural rules and history of individual communities needs to be distinguished against a whole Northern Territory process.

Now one of your interests at the AJA is on bail reform, is that correct?---Correct.

The Coroner's heard that Kumanjaya Walker called CAAPU and said he wanted to return and CAAPU said they couldn't take him back – this is in evidence. What changes would the AJA recommend to decriminalise a breach in circumstances where there's a funeral and cultural practice that's required and an expression of remorse?---I think it was reasonably foreseeable that Kumanjaya Walker would want to have gone to his family's funeral. If there was in place at the time an ability for senior police to make amendments and conditions for Kumanjaya Walker to attend that funeral, I'm not sure we would be here today.

THE CORONER: It wasn't bail, he was on a suspended sentence. He was on conditions from the court?---Suspended sentence with conditions.

So of course you can go back to a court and ask for a variation, but obviously that's some – you know, it's a process. I think also many of the rehabilitation centres have their own rules about granting leave and that would not require an amendment to the conditions from the court.

MR NEWHOUSE: Or perhaps the use of standard terms of orders which do allow that flexibility might be (inaudible) appropriate but - - -

THE CORONER: I think however, that in this case – I might be wrong – it was to do with the requirements of CAAPU in relation to when people are allowed to return, particularly in relation to the way he left.

MR NEWHOUSE: I withdraw that question then, your Honour.

The Coroner's heard about police needing guns to perform their duties safely. Are there other alternatives that haven't been considered?---| - - -

I mean open carry of guns?---So it's both firearms is one thing. An ability to access a firearm that's not exposed is another. CIB and detectives have firearms available to them but they're usually held on an ankle holster or a shoulder holster, so you still have access to weaponry if you need to under the circumstances that could change in an instant.

Do you see that as an alternative to open carry guns in community?---There's opportunities for discussion there but I understand that's not – that – that's not something that has had discussion.

I just want to take up some numbers that Dr Freckelton gave you. By my calculation the figures that Dr Freckelton gave included emergency service staff and he stated that there were actually 91 constables and 50 ACPOs. So that is a total of about 141, which is probably closer to 5.7 percent than 11.4 - - -

THE CORONER: But there's a lot of other Aboriginal people in different positions.

MR NEWMAN: Yes, but they're not serving police officers.

DR FRECKELTON: They're not sworn.

MR NEWMAN: Yes, they're not sworn. So the number of sworn is probably closer to about half the figure you gave. Will you just explain, 99 constables and 50 ACPO?

DR FRECKELTON: The figures that were referred to. They're in par 100 of the third statement of the Deputy Commissioner and that was, as I said, across the full police and Fire, Emergency Services, which the 11.41 percent figure. In par 101, what's referred to sworn members, and (inaudible) sergeants and senior sergeants, 91 constables and recruits, auxiliaries, ACPOs and ACPO recruitments, (inaudible) members, 183 of those.

MR NEWHOUSE: Thank you for clarifying that.

I'm wonder then, Ms Liddle, whether you have any other comments that you'd like to make about your statement, or the recommendations that you made to the Coroner?---I think – I've been very clear in the recommendations that I'd like to see. I think this is an opportunity for honesty, and to reset where we're heading, and

rebuild relationships with Aboriginal people. And I see the AJA as one part of many pieces to fulfil that role. An important part. I think everyone has a role to play in making sure that communities function well. From teachers and more. I think that there are a lot of agencies and operators that work in Aboriginal communities that can do better. And Aboriginal people in there have been so gracious and polite in the way that they have told us how us how that needs to change. And we need to respect that process, and actually take on board and listen to what people want to do.

I think finally, my last question, is there anything else you'd like to say to Kumanjayi Walker's family, or the people of Yuendumu?---I want to thank the Yuendumu Community for allowing us to do the consultations and the surrounding related communities and homelands. I'm sorry for their loss in this – in these circumstances.

THE CORONER: Thank you.

DR DWYER: Nothing arising, thank you.

THE CORONER: Ms Liddle, thank you so much for the great care and consideration that has gone into your statement. And in particular, your suggested recommendations are definitely something that we will reflect on very deeply. And I'm sure that the parties and in particular the police and health, will also reflect deeply on those recommendations. They provide significant insight. And we appreciate that?---Thank you.

Thank you.

WITNESS WITHDREW

THE CORONER: We'll adjourn for lunch. We'll return at 2 o'clock.

ADJOURNED

RESUMED

BRUCE PORTER:

THE CORONER: Acting Commissioner, welcome back?---Thank you, your Honour.

Now who were – where are we up to?

DR FRECKLETON: Still with me I think, your Honour. (Inaudible) yesterday again.

THE CORONER: That's all right.

DR FRECKLETON: Thank you.

THE CORONER: I liked that comment though by Ms Liddle, no data is no defence.

DR FRECKLETON: Yes.

THE CORONER: And I think that - - -

DR FRECKLETON: (Inaudible).

THE CORONER: - - - could be quite applicable to body-worn video and assessments of uses of force.

DR FRECKLETON: Well let's – since your Honour's raised that.

XXN BY DR FRECKLETON:

DR FRECKLETON: Mr Porter, let's deal with it. There was – there's clearly an issue in relation to the usage of body-worn video, particularly by Mr Rolfe, during the 2017 to 2019 period. Is that right?---Yes that's correct.

Now what's the police force doing to make sure that people turn on their body-worn video, and deal with it properly?---As I said previous, on my evidence, especially when it comes to use of force, we now have it all assessed by – well we put in places to increase the compliance by supervisors, as well as escalated to senior sergeants to review all use of force incidents. Which is they have to take into account body-worn video.

Mm mm?---Also we implemented, or commenced our SME position out at the college to - - -

Subject Matter Expert?---Subject Matter Expert position at the college to review, or undertake review of all use of force incidents. Which they then, if there's any non-compliance, gets reported through to Professional Standards Command, as well as that, there's been a number of broadcasts sent out in relation to body-worn video and compliance. Also with any complaint against police matters, we actually have

implemented in the IPRO system for any matter, irrespective of whether it be use of force or – or any other complaint of whether body-worn video was activated or not activated, or if it was even applicable in the circumstances. Which gets also monitored by PSC. And then we then take appropriate action whenever it's identified that body-worn hasn't been undertaken.

Let's go to a data question that her Honour was raising?---Yes.

When was body-worn video introduced (inaudible) into the force?---Be around 2015, somewhere around there.

All right. And is it fair to say that there was some level of controversy and a degree of non-compliance in the early days after its introduction?---Yes there was. And there was also only very limited roll out at that point in time, because of financial constraints.

But just (inaudible) the technology generally?---Yes. Because - - -

Right?---Because it was a new concept to the agency.

It was. So what do you know today, as to levels of non-compliance with the obligation to switch on body-worn video, when an officers is operational in any given scenario?---It's not a predominant matter anymore - - -

How – how do you know that?---Because of the complaints that come in.

All right, talk in terms of data if you would - - - ?---Yes.

- - - so her Honour understands. I'm not asking you numbers, but just to give her Honour a flavour of whether the – this issue to do with the use of body-worn video is being monitored, and what the trends are?---Yep. So when it comes in, as I've stated, an IPRO is flagged about body-worn video. It's a specific field. And we run reports. And I don't know – I can't give you data of how many, because there's that – because every incident you go to, you could have five or six members at one incident. So, it's multiple activations. So we actually run reports against – against IPRO which indicate if they've had previous non-activation or not. And then, like I said, we deal with it then appropriately.

If you were asked to, could you identify the numbers of occasions when it has come to the attention of the force, say in the last year, that body-worn video was not operative when it should have been?---Yes we can on that recording.

Right, so the data exists?---The data exists.

Would your Honour, would you like that?

THE CORONER: Sure.

DR FRECKLETON: I'm not urging you to take them, but – there are only so many things which are of value now, but - - -

THE CORONER: Well it did just arise in - - -

DR FRECKLETON: Yes.

THE CORONER: - - - Ms Liddle's evidence as well, about the fact that complaints are sometimes not lodged because people don't feel there'll be an adequate response. And part of that is because they're aware that there's been no video recording. And it seems that those complaints go nowhere.

DR FRECKLETON: Well it's certainly a crucial part of the information, possibly the most important bits of information about what takes place in an incident. Because it's (inaudible).

THE CORONER: And when it's word against word, it seems that the police are not prepared to accept the word of a complainant, as opposed to a police officer. And that's why I suggested that no data, no defence, might be an appropriate response. Where police have the capacity to record interactions, and where they're directed to do so, a) to record those interactions, and particularly in light of a complaint. Whether or not it amounts to no data, no defence, it should certainly be seen – viewed as a very serious failure to comply with the operational requirements of a police officer. In the - - -

DR FRECKLETON: (Inaudible) - - -

THE CORONER: - - - same way when someone doesn't blow into the breath test, fail to give breath equals a high range drink drive.

DR FRECKLETON: That's correct.

THE CORONER: For the penalty. It's the same sort of – failure to record an incident, should have the same sort of you know, level of seriousness – I'm not suggesting across the board necessarily, but should be viewed in the same level of seriousness as an unreasonable, or unjustified use of force, which is the complaint that's being made, if that's the complaint that's being made. Or if it's a complaint of a racist comment, or a rude comment, you know, if should – if you've – you're supposed to record it and you fail to do so, well the penalty is as though you've made a rude or racist comment.

DR FRECKLETON: (Inaudible) shifted onto the broad shoulders of Assistant Commissioner Porter. It's years on now from the introduction of body-worn video. You've identified a significant reduction, I think you've said, in the instances which are coming to your – the attention of PSC where people are not switching on their body-worn video, is that right?---Yes, that's correct.

What about where they don't? Her Honour's raising this issue because years on, broadcasts later, general awareness within – amongst members, that they do have to do this, and that it matters, what's the attitude of PSC now when there's a failure to switch on body-worn footage?---So as I stated in my evidence on Friday, is it all – every incident has to be assessed, because there can be some issues as to why body-worn was not activated. You know, where there's a technical issue, or whether it's just in the circumstance, they were unable to activate the body-worn. But everyone's assessed, but it starts at, generally, first strike as in you get remedial advice. And then if there's repetitive behaviour, it goes right up to part four action.

Because the first time might be from a very junior officer?---Yeah, that's correct.

Who's on the learning - - - ?---And generally we do get a couple of them. So when we have a new probationary member, who's not experienced in the field, we do get the odd non-activation by them, and it's a learning curve for them.

But generally, do you accept the proposition advanced by her Honour, that other than that scenario, a – a failure to activate body-worn video, seemingly technology's functioning, is a serious matter?---Yes it is. And we have actually undertaken path for action on a number of members of recent times.

We'll get you some data, your Honour. And given the way things are going, it might all be able to be provided to you through Mr Porter, before he finished.

I just raise the potential for equipment malfunction, does that happen occasionally?---It does happen occasionally, yes. And also there's the issues of flat batteries, depending on how long they've in the field.

What's – what's battery life of a body-worn video?---It generally won't last eight hours, and so if a member's doing a – like for example, overtime or a double shift, that the body-worn will generally run out of battery power, unless they've had opportunity to recharge.

I'm going to move on to the other issue that her Honour raised. I'll put my secrets aside for now. It's best to deal with it, while its live. Her Honour's raised this issue of where there is a complainant's word against the police officer's word?---Yes.

Does that necessarily mean that the police officer's word is accepted?---No, it just – in those occasions, generally the – the outcome is it's unresolved, because you cannot determine who – who is the correct version of events.

But what if there's information that suggests strongly that what the complainant is saying is right?---Then it would be put in the favour of the complainant, but it needs to have some sort of corroborating evidence.

So does – does the – the inability to identify on the evidence which version is right, mean that the police officer is exonerated?---Could you repeat that sorry?

Yes. It's perhaps important to try and get terminology right, isn't it, because if there are two people saying different things, does that mean that the police officer has not done what the complainant alleges?---No it does not.

What does it mean?

A PERSON UNKNOWN: Well, your Honour, with respect it's been asked and answered (inaudible) generally, at least (inaudible).

DR FRECKLETON: Is that the terminology that's (inaudible). I'm content with that. Is that the terminology that is used in Professional Standards Command?---As in unresolved?

Unresolved?---If it's unresolved we cannot determine whose version of events is, the correct version of events and as such the allegation cannot be sustained or unstained.

All right. Is there any other or fairer way of proceeding than reaching that kind of conclusion? Assuming there's no corroborating evidence?---I can't see of any other way. Of course it's all based on the available evidence.

Now before we proceed further trying to pull together the strands of the evidence that you've given to her Honour about the various complaints and issues which have come to light in respect to Mr Rolfe's use of force, I'd just like to give you an opportunity to set out to her Honour, please, what has occurred in relation to Mr Rolfe's employment since the conclusion of the trial? I'm not asking you to give any sensitive health information in open court, but could you just let her Honour know what has occurred in relation to his ongoing presence or absence at work? ---As in current status?

No, starting at (inaudible) until now?---So he was acquitted on 11 March 2022 from the trial and as such he was at that point in time suspended from duty, because he was charged with a criminal offence. He had disciplinary matters that were ongoing or held pending the outcome of the trial. At the conclusion of the trial the suspension, because he was under a criminal charge, was revoked and then he was directed to take leave pursuant to s 80 of the *Police Administration Act*.

And just explain why he was given a direction under s 80?---Yep. So he was directed to take leave under s 80 because he did have ongoing disciplinary matters which still needed to be resolved. So he was directed to take leave at that point in time because he'd also had basically three years of accrued leave. So he's in excess of leave, so we used that instead of further suspending him from duty. He then undertook a period of personal leave over that period. But then we thought - - -

I'll stop you there. So there's a period when he's directed under s 80 because of pending disciplinary matters. And did that – was that period of direction equal to his period of approved leave after three years of service?---No, it just takes – just continues until whenever the accrued leave runs out.

And so was there – the next development at the expiration of his approved leave period?---No. The next development was he went on personal leave while he's on accrued leave. But then he finished personal leave at that point in time, which was -
- -

Let me stop you there again. Sorry to do this to you, Assistant Commissioner. Was that in relation to a personal health condition or another obligation in relation to a family member?---No. The only information we had at that point in time is that it was due to a medical condition. We do not know what the medical condition was.

So how long did that period of personal leave for medical last?---Seven weeks at that point in time. And then his medical certificate ran out. Then there was conversations with Constable Rolfe in relation to return to work. We wanted to try to return him to work to integrate him back into the workforce. So there was a couple of meetings. So he returned to work on 18 July 2022 where at that period his direction to take accrued leave was revoked.

And what kind of work was he asked to do?---So because he'd been out of the workplace for so long he was put into administrative duties within the digital transformation group to assist with the electronic rostering project where we needed members who have experience of rosters to go in there and assist with that project. There's also an opportunity for him to undertake the mandatory college online courses that he needed to do which had expired whilst he'd been absent from work and also to undertake, catchup the remedial training in relation to any changes that have come in since he was last at work. So he was only with digital transformations for approximately three weeks before he then went back onto personal leave.

And why was that?---I do not know. His medical certificate just saying that he had a medical condition. So that was on, I think it was 10 August that he commenced personal leave again. He remained on personal leave right up until when – well right up until the end of January and then – so when I say it was personal – so in November because of his ongoing personal leave I instigated an independent medical examination.

Why did you do that?---Because we had no information as to what his mental illness was or why he was absent from the workplace. And he also indicated during his evidence at the inquest that when his medical certificate ran out on 9 December 2022 he advised that he would not be returning to work but we had no information as to why he was not returning to work.

Was he being especially singled out because he was Constable Rolfe?---No, he wasn't. I instigate independent medical examinations, I reckon, two, three a week on average with members.

So he had a medical certificate and you asked that he attend an independent medical examiner to evaluate his medical condition, is that right?---Yes, that's correct.

And was a medical certificate provided in due course?---A further medical certificate was provided for him to take leave from 9 December. It was a medical certificate advising that he was carer for his – for a family member. And that certificate was dated until 30 January 2022 – sorry, '23.

And did a report come from an independent medical examiner?---Yes. So we received a report from the independent psychologist in December. As a part of that report there was some matters that we needed further clarity on. So we then requested a supplementary report from that medical examiner.

And did you receive that supplementary report?---We ended up receiving that supplementary report on 30 January 2023 which is the day of the medical certificate expiring for Constable Rolfe.

So what happened after 30 January?---30 January is the medical certificate ran out. Constable Rolfe did not return to work. But on result of the information provided from that medical examination, I implemented inability provisions under part 5 of the *Police Administration Act*.

And what does that mean?---So I provided him a notice advising that it was my intention to retire him and as part of that – also that was on 6 February he was provided that notice. And then on 7 February he was provided a notice to stand down from duty pending the part 5 action.

And why was he given a notice indicating an intention to retire him?---So he was given a notice as per s 87 of the *Police Administration Act* where I formed the opinion that he had the inability to continue as a member of the police force.

To what extent was that in that decision informed by the information in the two reports from the psychologist?---No, it was fully informed by that assessment. Also I had a risk assessment done by our risk management internal audit division.

Was that because of the detail in the psychologist reports?---Yes, it was.

So on the basis of those the decision was to give him a notice of intention to retire him?---That is correct.

And have there been any developments since that time?---Since that time, Constable Rolfe has been issued a s 79 notice for, as we all know - - -

The essay (inaudible) words?---Yes, the opinion piece.

That was on the Sunday, not yesterday, but the week before. Is that right?---That is correct.

And that required him to provide an explanation form in essence, like a written essay and publish it?---That is correct.

And did he provide a response to that within the seven days?---It was due yesterday, but there was an extension given for an extra day to his legal representatives.

Okay. And on the basis of whatever information is provided by him, will there be further consideration given to other steps that might be appropriate?---Yes, it will be depending on his response.

Now, one of the things that Mr Rolfe has, at times, expressed aggrievement about was what he says is an instruction that he did not attend the police premises. Do you know what it's referred to when I identify that issue?---Yes, he's referring to the conversations had with myself and also the Director of HR at the time in relation to his return to work plan. And there was also a letter provided to him, I think off the top of my head it was around 14 July, he was provided a letter in relation to his return to work.

And so, what's the issue which his coming back to police premises?---At that point in time, because he hadn't been in the workplace for so long and the ongoing inquest, a determination was made that he would undertake administration duties, and he was given a workplace to undertake those administration duties.

Yes?---He was not completely banned from the police stations because it was advised to him in that letter that if there was a need for him to attend the police station, that he just discuss it with his executive member that he was nominated and also his return to work manager, Acting Commander John Atkin, so that access could be facilitated.

Given the kind of administrative work that he was doing, was there any particular reason for him to attend police stations?---No, there was not.

Again, was he singled out or was any punitive action taken against him because he was Constable Rolfe?---No, he was not.

I would like to come back now to the evidence that you've given to her Honour about the various matters that have been raised against him and which are summarised in the summary document of 10 pages. I'm not going to go through all of those again, but I would like to ask you some questions about use of force. How many use of force - - -

THE CORONER: Sorry, go on.

DR FRECKELTON: How many use of force forms do you understand Constable Rolfe to have completed during his years of active service?---The use of force was reviewed by Senior Sergeant Barram, I believe there was 46 in total. So that's 46 use of force reports in three years of service.

Based on all of your experience, what do you make of that number?---That's not a high level number. That's really only working on one a month and that's not

extraordinary for a frontline officer.

And where was he principally working?---On frontline in Alice Springs.

Is the raw number of use of force forms completed by a member a helpful indicator of whether they're using excessive force?---No, it's not. And if we have a member who is doing the right thing and reporting appropriately as use of force - because use of force, it is used for anything that is not a normal escort hold. So, any force that you undertake that's not just a normal escort hold or using handcuffs just for an escort or for searching, there's a requirement for members to provide or submit a use of force report.

So for instance, if there is a standard arrest which results in a person having handcuffs placed upon them, does a use of force form have to be completed? ---It depends on the circumstances. But if the person has just been arrested and then is compliant with handcuffs being placed on just for escort purposes or for searching, there is not requirement for a use of force. But if there is physical altercation or the person has been ground-stabilised and handcuffed, then yes, there has to be a use of force report.

Now, you've told her Honour about a number of instances where complaints have been made or whether, as result of this inquest or as a result of the analysis of Senior Sergeant Barram or through other reasons, an issue has arisen as to whether Constable Rolfe has used excessive force. Agreed? There are a number of reasons why matters have been reviewed - - -?---Yes.

- - - by PSC and by yourself?---That's correct.

Now, how many of those occasions have yielded an actual or potential determination that Constable Rolfe used excessive force?---None.

What about - - -?---Sorry, as in – there is the potential as in – but as an actual Part 4 outcomes, no.

None in relation to a Part 4 outcome? Is that partly because, on occasions, Part 4 was not available because of the s 162 limitation period having expired?---Yes, that's correct.

Let's go through the ones though where, in essence, there either has been - an evaluation for an excessive use has been used or there might be (inaudible), all right?---Okay.

First of all, I think you've told us of three, but you correct me if I'm wrong there. There's Master TG?---That's correct.

Is that the one where the view of yourself is that excessive force was used in the removal of Master TG from the rubbish bin?---Yes, that's correct.

There's the Araluen Park incident with the two intoxicated males who were pushed over?---Yes, that's correct.

In that case where there was a decision, not pursuant to Part 4, but generally, that excessive use of force was administered?---Yes, that's correct.

And there is the other Bailey matter which is, as yet, unresolved. Is that right?---Yes, that's correct.

But where there are concerns which need to be resolved by fair process?---That is correct, yes.

I just want to go through the dates of those three matters then. We must – you can use the 10 page document - - -?---Yep.

- - - if that's – it was provided for that purpose.

THE CORONER: Yes, I'm not sure if I've that up and running.

DR FRECKELTON: Thank you.

Master TG is on page 3 of that. The incident occurred on 11 August 2018. Is that right?---Yes, that's correct.

And then there's been a process that her Honour has been told about with the analysis and communication from Sergeant Baylis to the Ombudsman and the Ombudsman coming back to Professional Standards Command, but then through the processes of this inquest, a further review being done by PSC. Is that right? ---Yes, that's correct, your Honour.

And that took place, not before the Yuendumu incident, but during 2022?---That is correct, your Honour.

So that wasn't one where there'd been an adverse decision about this use of force prior to the tragic events?---Yes, that's correct.

Let's go to the next one on that page, that's the Araluen Park one. That was an incident that was in 2019, 18 February. Is that right?---Yes, that's correct.

And Mr Barram identified that in his review in March of 2020?---That's correct, yes.

And then ultimately on review, you have agreed with the analysis of Sergeant Barram?---That is correct, yes.

And again, when was that position on your part?---That was in 2022.

I think that's when the remedial advice was given, was the – when was the PSC review done?---2022.

All right?---I believe.

Just check your - - -?---I'll have to double - - -

- - - final column there. I just want to make sure I've got it right for her Honour?
---Sorry, that's when PSC reviewed it.

Yes. But it was – I've done a further review since then where - - -

Yes?--- - - - I then gave remedial advice to Sergeant Robert Kent (?).

Right. And oral remedial advice was given to Mr Hanson and Mr Rolfe has also been communicated with. Is that right?---Yes, that's correct.

So again, as of the date of the tragic incident had there been resolution of matters by PSC?---No.

Now I'm going to ask you about Mr Bailey, but we'll keep that very short, because it's not appropriate to go into detail in something that is not resolved finally as yet. But if you go to page 7, that's a useful way of going about it. That was an incident that took place on 12 October of 2019, is that right?---Yes, that's correct.

Now Mr Barram – there was a – it was identified, I beg your pardon – there was an identification of a potential issue in relation to the use of force – we'll keep it to just Mr Rolfe for these purposes – but that was on – around end of January 2020, is that right?---Yes, that's correct.

And then in due course, Sergeant Barram, expressed his views about the excessive, what he says is an excessive use of force, is that right?---Yes, that's correct.

And the issues are yet to be finally resulted because of various processes that are taking place that her Honour knows about?---Yes, that's correct.

Now I'm just going to whip through the other ones to try to put this into perspective. There's the Bojangles matter for 2017. So it's just (inaudible) the first one, review of PSC ultimately, the words not excessive use of force, is that right?---That's correct.

There's the Malcolm Ryder matter - - -

THE CORONER: I'm not sure that's the review. The view is that it's not possible to determine - - -?---Whether the force was inappropriate or excessive.

DR FRECKELTON: So not possible to determine, so no advise finding.

THE CORONER: Yes.

DR FRECKELTON: (inaudible)?---That's correct, your Honour.

Then there was the Malcolm Ryder matter. That was in early 2018?---Yes, that's correct.

Now this bundle, there was – perhaps we'll put it the same way again. It was not possible to determine whether the use of force by Constable Rolfe was excessive, is that right?---On the evidence that PSC gained, yes, that's correct.

So (inaudible) was provided. We've spoken about Master TG and we've spoken about the caravan park incident. Then going to Master CW, that was – it started April of 2019. And once again – and we can do this with the Madrill matter – both of those matters were in April and on both occasions was it not possible to determine whether excessive use of force had been utilised by Constable Rolfe?---Yes, that's correct.

The perjury matter where you have set aside for this purpose. There's the Chris Walker matter which was in June of 2019. Now how would you characterise the finding from yourself and PSC in respect of that matter?---Our finding there was that the application of force was appropriate, reasonable, necessary and proportionate in the circumstances.

So that's if you like, a positive finding rather than the allocated brief which we'd been utilising previously?---Yes, that's correct.

Let's move to Antonio Woods, which is a June 2019 matter. What – how would you characterise the ultimate finding by PSC there? This is the tripping and falling, the allegation by Mr Woods that he'd been kicked in the head six times?---Yes. No, we found that there's no evidence of excessive use of force undertaken by Constable Rolfe.

So again, if we refer to that as a positive finding, which is a bit of an understatement. A (inaudible) putting it, falsely finding that excessive force was not used?---That is correct.

Then there's the Todd Tavern matter. You've given evidence to her Honour about that and that was just shortly before we returned to commence. That was in September. And ultimately in reasonably recent times your decision after viewing the footage and going through all of the evidence was again, I think, a positive finding that excessive force had not been used by Constable Rolfe?---Yes, that's correct. But we determined that he could get remedial (inaudible) to cassette up further options.

My learned friend, Mr McMahon has raised a matter with me and I'm happy to deal with it. Going back to Mr Woods, if you don't mind?---Yes.

That's the incident involving the six kicks to the head alleged by the complainant. The initial investigation found insufficient evidence to determine if force was excessive. But you've ultimately on review made a positive finding that force used

was not excessive, is that right?---Yes, that is correct, taking into account all the other information from the custody assessment. There's no medical evidence, no injuries.

So there's been an adjustment of position from insufficient evidence to determine if force was excessive to a positive finding that the force applied was not excessive, is that right?---That is correct.

That takes us to the Bailey matter which arose on 12 October at 2019 and of course that's an ongoing matter, is that right?---That's correct.

And then there are the Yuendumu matters which have resulted in action being taken as set out in the table, in other words, remedial tasks in respect to a variety of things. Time having passed since the incident during the murder trial and so on?---Yes, that's correct.

And the other matters I won't go to, your Honour, because they're not (inaudible) matters per se.

So in those circumstances, was there any adverse decision about Constable Rolfe's use of force that had been made by the time of the tragic events?---No, there was not.

But there were a number of matters which were such as to arouse concern about the way in which Constable Rolfe pursued people, communicated with people and potentially used force?---Yes. And as well as nonactivation of body worn video.

Yes, absolutely. So what do you say about how those various issues were dealt with by the Northern Territory Police Force prior to the Yuendumu incident?---So it was identified by the Professional Standards Command of those issues starting to arise and Detective Superintendent – or at that stage Acting Commander Virginia Reid advised the Alice Springs Command Management Team of the concerns that we were starting to see.

So there was advice about issues that seem to be emerging?---That's correct.

Should more have been done or something different have been done?---No. Well at that point in time it was raised because that's the purpose of the Command Management Team, that if there's any concerns that are being identified regarding a member within that command, it is raised with the management team to take whatever action that they require to address those concerns.

So what was done?---So it was referred to, like I said, the Command Management Team by - - -

THE CORONER: Can you recall the date or approximate date?---No, it's in my affidavit, your Honour. I can't remember the paragraph.

DR FRECKELTON: Is this par 102 of your statement?---102, your Honour.

THE CORONER: Thanks.

DR FRECKELTON: So there was a – it was raised with the Commander of Southern and the Superintendent of Alice Springs.

THE CORONER: June 2019.

DR FRECKELTON: June 2019?---That's correct.

And there was a further discussion which took place with the then Acting Commander of Southern in July 2019, is that right?---Yes, that is correct.

That was particularly about the issue of body worn video activation, generally at Alice Springs but specifically to about Constable Rolfe?---That's correct.

And was the third conversation in October of 2019 that you detail there?

THE CORONER: And just before you go on. I just note from Virginia Reid's statement, 7-115 par 10, she notes that it was about this time when she's talking 12 June 2019. She spoke to Commander Curry and Superintendent Vicary during a command management team, advising those reviewing a number of complaints referred to there from the Ombudsman's Office, when NAAJA had raised concerns with the complaint outcomes, and it was likely they would be re-categorised and further investigated. "I further conveyed that I was concerned about Constable Rolfe's non-adherence to the body-worn video policy, and that this was the third occasion that I had become aware of people fleeing from him, and injuries occurring when apprehend." That was June 2019.

DR FRECKLETON: Thank you.

Now what do you say in light of those various analysis being (inaudible) all of them senior members, about the follow up and the sufficiency of response?---Could have been done better.

What does that mean? Should it have been done – it obviously could have been done differently. Should it have been done differently and better?---Yes I believe it should have been.

Right?---Because there had been previous stuff sent by Superintendent Vicary, or conversation with Constable Rolfe by Superintendent Vicary.

I'm going to refer to the single page document now. Well it's actually two pages. It's front and back. Do you know what I'm referring to if I - - - ?---Yes I do.

- - - (inaudible). Now this – this gives a listing of the remedial advice to Constable Rolfe, in relation to a variety of matters, including non-activation of body-worn camera, is that right?---Yes that's correct.

And we can see that – that there were various forms of advice, but let's have a look at the dates together if you don't mind. There's an email from Superintendent Vicary on 5 March 2018. There's a conversation involving Senior Sergeant Gall in February of 2018, is that right?---That's correct.

And there's a reminder by Superintendent Vicary, in April of 2018?---Yes that's correct. And then after it was bought up at the CMT, it is our understanding that were DIP tests of body-worn video undertaken by Superintendent Pauline Vicary.

I'm going to stop you there. What's a DIP test?---So going into AXON, looking at the body-worn, so going in AXON, looking at it – jobs that Constable Rolfe attended, and looking at whether the body-worn had been activated and downloaded onto AXON. And then doing a DIP test of review of that body-worn on our AXON data base to ensure - - -

If we describe that DIP test as an audit - - - ?---Yep, yep.

- - - would that be accurate?---Yep, it is, it's an audit.

And then you have recorded in this sheet, that – that remedial advice was given in October in respect of the Martin Ryder non-activation body-worn camera? It's the fifth entry?---Yes, that's correct.

So are most – it's referred to as given on 4 October and 5 October, was that essentially the same thing being administered?---Yes, so that was remedial advice as – it is the same thing as being administered as remedial advice, yes.

So there are five separate occasions when formal communications of different kinds, email, conversation, reminder, and remedial advice, were administered to Mr Rolfe, during 2018?---Yes, that is correct.

All of them about the non-activation of his body-worn camera?---Yes that is correct.

And then ultimately, there were further examples of remedial advice given, but they were last year?---That is correct.

So when you look back at that, recognising that whatever else he might or might not have done during the tragic incident, he did operate his body-worn footage, yes? ---Yes.

What do you say about the sufficiency, or otherwise, of the response of the Northern Territory Police Force, to the various examples of Constable Rolfe turning on his body-worn camera?---Still believe it could have been done better.

Should have been done better?---Should have been done better.

(Inaudible)?---So I give example, the remedial advice that was back in 2018, in relation to those first three - - -

Yes?---That was never reported to PSC or recorded on IPRO, and it should have been.

Now today, is it likely that it would be reported and recorded and IPRO?---Yes.

And there are various other issues about which he was provided with remedial advice, in relation to the Operational Safety Principles, but that's going to happen upon his return to work?---That is correct.

And if he comes back to work, likewise, he'll be given remedial advice about the need for minimisation of force and adherence to tactical operations (inaudible)?
---Yes, and the proper use of the tactical operations - - -

Yes?---Tactical options.

(Inaudible), thank you, I said operations, I shouldn't have?---You did. You confused me there.

I beg your pardon. That's my fault. And – but he has been given remedial advice (inaudible) in relation to Master TG?---That is correct.

He was counselled in relation to not submitting appropriate reporting in respect of the Ryder matter?---Yes in relation to a custody injury report, or incident injury report.

And there are various other matters arising out of the tragic events at Yuendumu, is that right?---That is correct.

And those would be administered should he return to work?---That is correct.

When you look back, how would you characterise the cooperation of Constable Rolfe in relation to his body-worn camera obligations during 2018?---No his performance 2018 was fairly poor.

And if that happened today, if somebody did that repeatedly in 2023, you've said if they're early on in their career, they'd be quietly given some guidance. But if they kept doing it, in I mean, transient way, what would happen?---He would have ended up having part four action.

THE CORONER: And that's what should have happened back in 2018 as well?
---Yes, on the - pretty well the third account.

DR FRECKLETON: I don't want to go over what you've said already, but at paras 181 and following, of your first affidavit. You say at par 181, "It was apparent that

some of Constable Rolfe's supervisors and peers either condoned or overlooked his poor behaviour, because it's not consistent with the values of the police force. And this was not acceptable." And what did you mean by that?---Because some of those incidents that were reviewed, after the fact, so reviewed by Senior Sergeant Barram, and also reviewed by PSC, is that it was supervisors who found the use of force in those circumstances to be appropriate and justified. And on review of those incidents, they weren't, and so the supervisors should have recognised that and dealt with that.

And again, has the message been given as best can be done, clearly, that supervisors are obliged as part of their duties, to do better, and differently from what happened in respect of Constable Rolfe?---Yes they have. It's also been put out through broadcast, as well as live templates or sheets for doing assessment of use of force. And it is also forming part of the Sergeant Development Course. Which the first course kicks off on 13 March.

I'm not going to ask you in detail about the content of various communications that have been identified on Constable Rolfe's telephone, because there are legal issues which have been placed before the Supreme Court, on an application for judicial review, all right? However, one of the things that Constable Rolfe has said, (inaudible) essay and other things, about those messages is that they were intended to be private, between him, and various other officers. Now is – is that, in general terms, an acceptable excuse for using racist, sexist, homophobic, disrespectful, misogynist remarks in communications to other police officers?---No, it's inappropriate and it's not in line with the code of conduct where you have to abide by the code of conducts at all times, both on and off duty.

And has a broadcast force wide been sent out to address that issue specifically?
---Yes, I believe so. I can't remember the specific date but there was one sent out.

And that was referred to in the file (inaudible).

THE CORONER: Does the code of conduct specifically refer to racism?---Yes, it does, your Honour. It talks about racism, discrimination and other things.

DR FRECKELTON: And is there also reference elsewhere in force policies to the need for respect and inclusiveness in dealings with anyone?---Yes, it's in our respect, equity, diversity policy.

And for how long has that been in force? I won't pin you down to a - - -?---No, it's been a long time. It's been a long time. I can't remember the date but it's been in for quite a while. And as part of that also every member of the police force undergoes respect, equity, diversity training and they also have to complete a mandatory biannual, or every two years, they've got to complete a mandatory refresher of the respect, equity, diversity policy and the requirements.

I'm reminded that reference to the broadcast is to be found in par 66, that's the small pages (inaudible).

And you probably heard evidence this morning about issues to do with systemic racism and arguments that it would be useful to engage with whether anything done or not done in processes within the Northern Territory Police Force, this should be reflected upon in terms of whether they constitute systemic racism. Did you hear that evidence?---Yes, I heard that evidence.

Now as an assistant commissioner of the force, is that an issue with which you would be prepared to engage and have further discussions with responding to us?---No. That's all merit in undertaking that sort of work, because we all have a broad understanding of what's systemic or institutional racism is. It is different to your interpersonal racism. But if there are any systems or processes that we have in place that do disadvantage anyone in our agency, it should be looked at, yes.

THE CORONER: And you see the benefit of someone from outside the agency adding perhaps a – no matter how objective you try to be within your own agency – but an outsider can have perhaps another perspective and perhaps a more objective perspective?---And that's correct, your Honour. And it's my understanding under the Aboriginal Justice Agency, because my deputy commissioner, or one of my deputy commissioners, Michael Murphy, is the NT representative on that Governance Committee, is that one of their roles is examining all NTG public sector organisations in relation to systemic racism. I believe that they've already done an audit on DIPL. But they will be looking at us in the near future.

DR FRECKELTON: And is the Northern Territory Police Force prepared to be open and to discuss those issues?---Yes.

Your Honour, I referred to the respect, equity and diversity policy. That's to be found in the third of the Deputy Commissioner's (inaudible).

THE CORONER: Thanks.

DR FRECKELTON: Now an issue that's been raised is whether in all the circumstances that existed at the relevant time Constable Rolfe should have been a member of the IRT given the specific provisions in SOPs for the IRT about that measure and I think you refer to this at par 105 and following 151 and following of your first affidavit. Let's go to 105 first. There's an excerpt from the relevant provision of the Standard Operating Procedures for the IRT there, is that right?---Yes, that's correct.

And so there it says members who are the subject of disciplinary action will be stood down during the investigation and subsequent penalty period (inaudible) command. Now to cut through this, was that the situation with Constable Rolfe in the period leading up to the tragic events?---No, Constable Rolfe had no formal disciplinary action ongoing at that time.

THE CORONER: Should he have, however, been subject to disciplinary action given CW and LM and the fact that he'd failed to activate his body worn video on two

further occasions in 2019?---Well all I know, your Honour, is he didn't have any disciplinary action pending. There was investigations ongoing at that time and the Command of Southern Command was fully aware of those matters because they all form part of the Command Management Team meeting. And so ultimately it was a decision of the Command of Southern Command whether Constable Rolfe remained on IRT or not.

But given the five warnings or five responses to failure to use body worn video in 2018 that we've referred to and the fact that you've now – that on 2 April in 2019 there was a complaint in relation to CW and that complaint also involved – or the incident also involved a failure to activate body worn video, you're up to disciplinary action, aren't you?---Yes. So as I highlighted before, your Honour, those first three, PSC were not aware of those. That remedial lies from Superintendent Vicary or Senior Sergeant Gall.

DR FRECKELTON: But they should have been?---They should have been. The ones that – the two that were given in October related to the one matter involving Malcolm Ryder. So technically at that point in time a PSC - - -

THE CORONER: There's also the one given on 26 July?---That's 2022, your Honour.

That's 2022. Sorry. So PSC are aware of one but they're raising it – I'll take that back. But in fact there were four and then we have the 1 April 2019?---Yes, that's correct.

So if everything had been working as it should have been - - -?---There should have been serious consideration. The disciplinary action should have been commenced. So it should have been a serious consideration by the Commander Southern if everything was working as it should have at that time.

DR FRECKELTON: And was - - -

THE CORONER: And was - - -

DR FRECKELTON: Sorry, your Honour.

THE CORONER: Sorry, the timing is bad.

But the same applies when we take into account 20 April 2019 incident and a non use of body worn video. It wasn't identified until 14 October but had everything been working as it should have been this would have been the sixth?---Yes, that is correct, your Honour. It definitely would have been part 4 action, for that many non-activations.

DR FRECKLETON: There was on 30 October 2020, what is described as a critical decision of Professional Standards Command, this is to be found in the first exhibit,

your first affidavit, so VPO (Inaudible). Do you know what I'm referring to here - - - ?-
--Yes.

- - - Assistant Commissioner?---Yes I know what you're referring to.

Now this relates to a meeting held on 30 October, involving yourself, Assistant Commissioner White, Assistant Commissioner Anticich, and the Acting Senior Director of Legal and Strategic Policy. Going particularly to the third of the decisions, what was determined on that date?---Just the third decision?

Yes, let's focus on that one?---Yep, so the decision was, that at that point in time, there was no barriers to preclude Constable Rolfe and others for the incidents that they were involved in. That it was separate to the criminal matter being dealt with, re the Yuendumu matter. And that under part 4 of PAA that they could be spoken to in relation to those matters.

All right, so that was a formal decision in effect liberating Professional Standards Command to investigate matters, other than the Yuendumu incident?---That is correct.

But of course, it was inappropriate, and this is where the first of the decisions come in, that Constable Rolfe be interviewed in relation to that, given that there was a (inaudible) trial pending?---That is correct.

Now so that's – that's 30 October. Was another decision taken in March of 2021?
---Yes it was.

Now between those two dates, namely between October and March, had there been correspondence between PSC and the legal representatives for Constable Rolfe?---No, the correspondence actually started back in August, before that critical decision.

Before October, right?---Yep, so back in August - - -

Just summarise in general terms, we don't need to go - - - ?---Yep, so there – so there was correspondence between Professional Standards and legal representatives for Constable Rolfe in relation to the need to interview Constable Rolfe for a number of outstanding matters. I believe there was seven listed within the correspondence. There was backwards and forwards between the both parties. And as a result of that back and forward, then that critical decision was made. Because one of the matters listed originally was the Yuendumu matter. Then that critical decision was made. Correspondence continued. Which resulted in legal representative writing direct to Commissioner Chalker, in relation to the lawfulness, and what is right in relation to interviewing his client - - -

Was that in March? (Inaudible) March of 2021 (inaudible)?---Yes I believe that was 5 March that letter was sent to the Commissioner. Then there was a meeting held. So that was referring to Deputy Commissioner Smalpage.

All right, and in essence, what position was adopted by Deputy Commissioner Smalpage, in light of the correspondence from those representing Constable Rolfe, and the serious concerns raised on Constable Rolfe's behalf, about the impact of interviewing Constable Rolfe about other matters, when the murder trial was at hand?---Yes, the decision was made that Constable Rolfe would not be interviewed in relation to any matter, due to the coronial – sorry, the criminal trial active.

So priority was given to the criminal trial matter as against continuing investigations in relation to disciplinary matters?---Yes that is correct.

And did you and PSC comply with the Deputy Commissioner's instruction?---Yes we did.

And do you stand by that as an appropriate response?---Yes I do.

Why?---Assessment was undertaken of a number of the investigations. It was determined that there was likely not to be part four action on most of them. And the – the criminal trial was taking precedence over anything else, because it was a very serious matter, involving the – the member involved. And we did not want to jeopardise any judicial processes.

I'd like to take you to par 48 of your third affidavit please. This falls under the heading "Improvement in Practises"?---Sorry, could you give me - - -

Par 48 - - - ?---Thank you.

- - - of (inaudible)?---Thank you.

I'd just like to make sure that you've said what you want to say in relation to the missed opportunities that existed to address behavioural concerns in respect of Constable Rolfe?---Yes.

Is there anything you'd like to add to what you've said earlier in that regard?---No I don't think so.

Thank you. All right, let's – let's go to the final matter then please. I'd like to ask you just a small number of questions about the, what's called the Galiat Report. You're closely familiar with that?---Yes I am.

The – the Commissioner has accepted in principle, all of the recommendations from Mark Galiat?---Yes that's correct.

What is – what is your view about the Gelliot Report, and it's (inaudible) your force? ---I think it was a review that was needed to be undertaken.

Yes?---Because it is pretty well recognised that the current complaint system is not productive to a modern police force. It was an independent review. So it was Mark Gelliot's own review. But there are a lot of things in there that will drive positive

change for the organisation, in relation to – especially in relation to the structure of the Professional Standards Command, and also new processes that will have a more focus on developer – development and managerial intervention with members, rather than formal disciplinary processes.

Okay, I'd like to come to some matters which have been raised by Commander Galiat, but also in an affidavit from Marcel Delaney of NAAJA, in a (inaudible) from 28 February of this year. Ms Delaney has done an analysis of delays in relation to the completion of complaints. And in essence, has said that first of all, matters are finalised too slowly. What do you say about that?---I agree, some matters are finalised too slowly.

Why are- why are things too slow?---There's a variety of reasons.

Tell her Honour about those?---So, I give example for a – just a minor complaint, which is dealt through the Complaint Resolution Process, which should be dealt with immediately. There's a change in process with the Ombudsman's Office. Whereas initially, the supervisor could deal with that matter, in the field, on receipt of the complaint. So deal with it then and there. Whereas a change by the Ombudsman's Office, that it has to be categorised before it can be dealt with. So a report will be taken from the complainant. Sent through the Professional Standards Command, then it'd go through to the Ombudsman's Office for categorisation. Then it'd come back through as a Complaint Resolution Process matter. And it'd go back out to the command, and then the issues that were faced, is the ability is to then find complainant's to resolve those matters. Which could have been dealt with on receipt of the complaint, then and there. There's also some of the issues with delays is at the time with category one and category two investigations, is there was significant delay on a number of matters, due to the COVID emergency, as in PSC staff were moved away. Also those who were allocated investigations were undertaking other duties in relation to COVID response, and not actually doing the investigations as required. There's also certain delays when it comes to Freedom of Information applications. So at times, NAAJA will make a Freedom of Information application to get information through other body-worn video, PROMIS records, any CCTV or whatever to support any complaint that they wish to lodge. And so there are delays in relation to that space and a lot of them can be delayed due to, there's an ongoing criminal investigation that it may prejudice through the release of any FOI, and those types of things.

One of the other matters that she raises here is how findings are made. She raises various issues. I've got my (inaudible) because too often males impute decisions to a male when they're in fact a female. I seem to have done a reverse and I apologise for that, I'm sure that Marcel is a male, so I'm sorry. But Mr Delaney has also criticised how findings are made by Professional Standards Command. Do you have any response which you wish to make in that regard?---The findings are detailed. There's seven actual agreed or approved findings that are within the police complaints agreement. PSC, whenever they go through the evidence, match that evidence against what is written within those findings within the Police Complaints Agreement.

Are there problems with the architecture of the process as set out in the Police Complaints Agreement? That's another issue which Mr Jermaine identifies here? ---Not that we've identified and that's – to be honest, that's the first time I've actually heard that there were issues in relation to those findings.

And you've given, I think, the answers you wanted to provide in relation to an unresolved finding or an insufficient evidence to sustain the allegation finding. Is that right?---Yes, that's correct.

All right. What Mr Delany says to summarise in par 27 is that, "The effect of strict compliance with the categories of submitting my client's complaints must be finalised as unresolved or insufficient evidence to sustain the allegation, unless there is unequivocal evidence arising from body-worn footage." What do you say about that?---I'm actually confused as to what he's actually saying there, because - - -

I understand - - -?--- - - - the finding is different to a categorisation.

The bottom line is that not many complaints are established, especially when there's no body-worn footage to resolve things one way or the other?---Yes, that's correct. And as I stated before, we have to go on the evidence to make a determination. If we don't have the evidence to determine whether the complaint can be substantiated or not substantiated, then it remains unresolved.

Now, Commander Gelliot has recommended a variety of changes to the *Police Administration Act* and to processes so that less serious matters are dealt with quicker at command level, but more serious matters remain under a new version of Part 4. Are you in agreement with that approach in general terms?---Yes, in general terms.

He has identified some problematic limits in terms of resourcing a professional standards command. Do you identify an issue there?---Yes, I do and I highlighted it in my evidence of Friday re: the changes in resources and what we actually do need to move forward.

And that incorporates having an assistant commissioner specifically dedicated to Professional Standards Command?---That is correct, to drive all new contingency approval initiatives and to have that face to face and close contact with key stakeholders to actually drive our continuous improvement.

Are there any other issues which you would like to identify to her Honour about the Gelliot report?---It's going to take time. It's going to take a lot of consultation with a lot of stakeholders to determine the ability to progress some of those recommendations, especially when it comes to legislative change, when there's legislation that's owned by others. So there'll be a need for a lot of consultation in relation to some of those initiatives or recommendations that have been put to the Northern Territory Police Force to consider.

However, are you and the commissioner committed to reform of a process that's formally in line with what's been recommended by Commander Gelliot?---Yes, we are.

Sir, to conclude the questions from me, I think there was something that you wanted to communicate to the court and to the family of Kumanjaya Walker in relation to your own response to the tragedy?---Just from a personal perspective and on behalf of the Northern Territory Police Force, I do want to pass on my condolences to the family of Kumanjaya Walker, and for the ongoing stress that is created going through just a long, drawn out process. And I also want to pass on my condolences to all those others involved, including the Department of Health and those who work for the Department of Health.

And what do you say about your own commitment to reform to take account of what is being learnt in the course of this inquest?---Well, I've always been fully committed to everything to improve the Northern Territory Police Force. It is recognised that we could have done better and we can do better, and that we are really pushing to increase our Indigenous or Aboriginal employment within the agency. They are part of our family and we need to do everything that we can do possible that is right to have that engagement and interaction, and agreed understanding with the community that we served.

Thank you, your Honour. Would this be a convenient time for a short break?

THE CORONER: Sure. We'll take the afternoon tea break.

WITNESS WITHDREW

ADJOURNED

RESUMED

BRUCE PORTER:

THE CORONER: Yes, Mr Murphy.

XXN BY MR MURPHY:

MR MURPHY: Assistant Commissioner, my name's Murphy, I'm one of the lawyers who appear for NAAJA. Do you agree that one of the essential functions of a police complaints system is to maintain community trust in police?---Yes I do, excuse me, yes I do.

Would you agree that that trust is built up over time, by a law functioning police complaints system?---Yes I agree with that.

And do you agree that that trust can be lost over time, by a poorly functioning police complaints system?---Yes I agree, it can be lost, yes.

I'll just ask the court staff to pull up the first document that I wanted to refer to today, which is at 13-1 – 13-1 of the brief.

Which is, as you can see at the heading there, "The Report of Inquiry into the Death of Jabanardi." This is an – a document associated with the Royal Commission into Aboriginal Deaths in Custody, in which Commissioner Johnston QC, looked into a particular coronial inquest. And I want to give you one page for context, and then asked you to reflect on another page. The page that I'd like to take you to is page – to page 40 – page 52 of the PDF, which is page 41 down the bottom.

Just the previous page, thank you court staff.

And just, under the heading, "Complaints Against Police", Commissioner Johnston reflects on evidence and concerns that were raised at the inquest. And I'll just ask you to read that to yourself, so that you're aware of the context in which the subsequent remarks come. And let me know once you've finished reading that? ---Yes, I have.

And I'll just ask the court staff to move to the next page.

And I'll ask – I'll read out one passage, and then another, and ask you to reflect on each of them?---I'm done reading, sorry.

So the second paragraph reads, "It's clear to me from consultations and investigations which I've conducted during the course of the commission, that the question of the establishment of an effectively and demonstrably fair complaints system is a very important matter in the minds of Aboriginal people, who have frequently raised this question." Do you agree, and I should say this before, it's

published in 1991. Do you agree that the effective running of a police complaints system's been a matter of concern to Aboriginal people of the Northern Territory for over 30 years now?---Yes, I agree.

And relatedly, in the next paragraph down, Commissioner Johnston said, "A related topic is that – is that concerning that even handedness of police investigations into the conduct of police, in my opinion, no fair-minded person could read a finding of fact and reasons for a decision of the Coroner in Ti Tree (inaudible) without feeling a great (inaudible) about the apparent differences in approach, adopted by police investigations in scrutinising the conduct of Aboriginal participants, in events on the one hand, and the conduct of the two police constables on the other." Do you agree, that a perception of bias or differential treatment by police investigating police, has been an issue of concern to Aboriginal people in the Northern Territory, for over 30 years?---I agree that that's a perception, yes.

And that that's a (inaudible) concern?---That's perception, yes.

And do you agree, having heard – were you in court for the evidence of Ms Liddle this morning?---For part of it, not all of it.

Did you hear Ms Liddle give evidence that during consultations she's conducted with Aboriginal community members, that there is still until this day, a concern about the fairness and independence, I'm paraphrasing, but the fairness and independence, of the police complaints system in the Northern Territory?---Yes I heard that evidence.

Do you agree, and I'm asking this in the abstract, because I appreciate – well I expect you might agree, that we're at this point, but do you agree that theoretically, there's a point at which it has to be acknowledged that community trust in police has been eroded for so long, and so fundamentally, that a radical change is required in the police complaints system?---No I don't agree with that. But I agree that there needs to be change of the system.

So you don't agree that there comes a point where there needs to be radical change? I'm not saying right now, but do you agree theoretically that there could come a point, where trust is so eroded that something radical has to be done to change the system?---I don't agree re that trust eroded as in that is what's being reported, but that is not what I've been seeing myself. And – but there is a need to have a change to the system, where we can be equitable to any complainant, no matter whether they're Aboriginal or otherwise.

And is it your evidence that that change can really come about by giving effect to, with consultation, the Gelliot Report?---Yes that's correct.

I'll return to that at the end of my questions, but I'll just ask you about a few of the incidents you've given evidence about. And the first one – I'll ask you about four. The first one is 2 April 2017, which is the fist fight outside Bojangles, and then an incident, in which I think it's – well it is uncontroversial that Constable Rolfe tackled a

man to the ground, to the bitumen, and for which the man was ultimately given an infringement notice.

If I could ask the court staff to bring up the section of the transcript from your evidence on Friday. And perhaps if the – if the court staff could scroll down.

You agree that this – before I ask you about the transcript. This is an incident where Constable Rolfe did not have his body-worn camera on, you agree with that?
---Yes I agree.

And when you were asked –

And I'll just ask the court staff to slide it down – scroll down slightly. And also we can see the (inaudible).

When you were asked about this incident by Dr Freckleton, you may have referred to this evidence, Sergeant Barram, but particular bit of the answer I'm focused on, I'll allow you to read it for context, is the last two sentences, which start,

“Without body-worn footage, because there was no body-worn footage available to make an assessment, you have to take the words of the member, the member at the time. Is – I couldn't fully myself ascertain that it was not particularly necessary in the circumstances, just because of the outcome or the ticket to the offender.”

Do you agree that the evidence you gave then was that in the absence of body-worn footage, you understood it to be the case, for yourself, that you have to take the words of the member? Do you agree that's the evidence that you gave?---No I don't agree, because on the review of that, there wasn't just the one member, there's also the evidence of the other member, that was (inaudible).

So did you misspeak when you said – it certainly looks like you're trying to convey there that because there's no body-worn footage, you have to take the words of a member. Was that sort of an imperfect expression - - - ?---Yeah - - -

- - - or approach?---That wasn't the intent.

Okay. I put it to you that your answer there was organic in response to a question by the counsel assisting the police force. And that that is reflective, generally speaking, for police approach to complaints, in which body-worn camera footage is not available. Do you agree with that, or disagree with that?---No I disagree with that. If there's other evidence to support either way.

I'll just ask you then about your approach to these incidents, or rather your finding. You found that it was not possible to determine, whether the force used was reasonable or necessary or proportionate, or appropriate in the circumstances, owing to a lack of information. That's right?---That is correct.

And - - - ?---Sorry, just (inaudible).

No that's all right, I don't need to refer to it any more thank you, that's fine. Detective Sergeant Barram however, reached a different conclusion. And that was that the force was not reasonable, that's right?---Yes.

And Detective Sergeant Barram's finding was based on his conclusion that "Force was used when it could have been avoided." Do you agree that that was his basis for the finding?---I think the basis of his finding was that force could have been undertaken in another way.

I'll ask you to turn up your first statement at par 53?---Sorry, my first affidavit?

Your first affidavit at par 53. And do you see there that you've said, you agree with Detective Senior Sergeant Barram that in choosing to pursue the male, this ultimately led to a situation where force was used when it could have been avoided. Do you agree first that that is your understanding of the basis for Detective Senior Sergeant Barram's finding?---Yes, that's the basis, but there was further, which is in my affidavit on his assessment of that matter.

The coroner has his affidavit. So you've said that was at least part of the basis for Detective Senior Sergeant Barram's finding. But you also agreed with that. You agreed that in this instance, force was used when it could have been avoided. Do you agree with that?---Yes, there could have been other options.

Can you explain to the coroner how it is that where force could have been avoided, it's – you didn't reach a conclusion that it was unnecessary?---No, because I cannot determine what is in the mind of the police officer at that particular time.

And in your view that, in assessing the necessity of the use of force, you need to get into the mind of the police officer at the time?---No, because you're going on the evidence of what the police officer's provided. But the reality of it is that in this instance, you have a person who has committed offences, a person who is escaping from police, the police officer used force to apprehend that person. And I cannot find that, in the circumstances, without any other information, that that force was not unreasonable in the circumstances.

I'm just focussing on the word "necessary". Could you tell the coroner of what your understanding of the word "necessary" is, in terms of it being a criterion of the lawful use of force or the proper of force?---Yes, so "necessary" is, was it necessary – so was there a requirement to undertake that particular course of action in that circumstance.

Do you agree that in the ordinary meaning of necessary is that it was needed or essential?---Yes.

Yes. And do you agree that, in circumstances where the force could have been avoided, it cannot be said that it was essential?---I can't say that because, is it

essential to apprehend an offender who may have committed an assault on another person, which is the visual incident that the members are faced with.

I think I've taken that as far as I can, but out of fairness, I'm going to put to you that your approach to that incident is reflective of a police-orientated mentality or a pro-colleague bias that insufficiently values the interests of the complainant. What do you say about that?---No, I do not agree.

I would like to take you now to the incident on 11 January 2018, this is the Malcolm Ryder incident. This is an incident where, as a civilian who wasn't initially the arrest target, sustains two head injuries requiring a total of 13 to 16 stitches, there's differing evidence about how many stitches, and was ultimately hospitalised. Do you agree, and I'm not asking you to remember the specific words, but that do you agree that this is a general understanding, your general understanding of what a Local Court judge's findings were in relation to the criminal proceedings that resulted out of this?

And for everyone's benefit, I'm reading from the second Barram affidavit at par 41 where it's extracted, "How the injuries occurred and in what sequence of events is more likely than not to be in a manner consistent with Malcolm Ryder's evidence; that is, Rolfe deliberately banged his head into the floor as he was being turned over to be handcuffed."

Is that your understanding of the Local Court judge's findings in the related criminal proceedings?---Yes.

And in the face of that, what you rely on to say that there was insufficient evidence is that there were conflicting accounts. Do you agree with that?---Yes, when you say "conflicting accounts", between Mr Ryder and the police officers present?

Yes?---Yes.

And if you need to refer to par 69 of your affidavit, you can. But I think you've agreed that that's the matter that you relied upon. Do you agree though that in all or almost all use of force complaints, there's going to be conflicting accounts, unless the police officer admits that they've used excessive force? Do you agree that in all or many use of force complaints, there's going to be conflicting accounts?---Yes, I agree.

Do you agree that there were conflicting accounts before Judge Borchers in the related criminal proceedings?---I wasn't at the proceedings and I haven't seen the full transcripts, but that's the indication, yes.

Yes. Did you not review the full transcript when you were reviewing this use of force incident?---No, my Professional Standards Command reviewed the full transcripts.

But as you understand, and I think you've agreed there's been conflicting accounts before Judge Borchers. You agree with that?---Yes, I agree.

And obviously on your understanding of Judge Borchers' findings, he was able to resolve those conflicting accounts?---Can you explain that, please?

As in, notwithstanding the conflicting accounts, Judge Borchers ruled it able to find it's more likely than not that the injuries were sustained in the manner consistent with Malcolm Ryder's evidence. You would agree that Judge Borchers was able to resolve the conflicting accounts?---That was the judge's assessment at the time, yes.

Yes. But you and the PSC were not able to resolve the conflicting accounts. Is that right?---Yes, that's correct.

Yes. I put to you out of fairness that your or the PSC's inability to resolve the conflicting accounts in circumstances where a Local Court judge has, is indicative of a police-orientated mentality or a pro-colleague bias and it shows insufficient value for the interest of the complainant. What do you say to that?---No, I do not agree, is we done further investigation and – or the crime commander done a further investigation and it was unable to be determined.

I'll move onto the third of the four incidents that I want to ask you questions about. This is in relation to CW on Anzac Hill and it's the 1st of April 2019. Here we have another Aboriginal man, or in fact it appears a youth, who ends up bleeding from the head after being arrested by Constable Rolfe. Again, we have no body-worn footage from Constable Rolfe. You determined that, "There was insufficient evidence to establish whether use of force was excessive, given the only available evidence was the conflicting accounts provided by Constable Rolfe and" – I won't use the person's name, I'll say CW. That was your determination, that's correct?---Yes, that's correct.

To return to something that I just asked you, you're aware that many fact-finding processes, including fact-finding processes that occur every day and report to the Northern Territory, surrounding evidence can be taken into account to prefer one account to another?---Yes, that's correct.

You would agree that that makes sense, as a matter of logic and fact-finding?---Yes, I agree.

Okay. Would you agree that the following categories of surrounding evidence are potentially relevant to whether a fact finder prefers one account to another; first, the fact that the alleged wrongdoer has attempted to avoid, or appears to have attempted to avoid, scrutiny. Would you agree that would be relevant to whether or not you accept their account?---I can't determine whether he attempted to avoid scrutiny or not.

Sorry, I'm just asking out of a matter of - as a matter of principle. I mean, you're obviously engaged in fact finding and joining inferences from facts. Do you agree that as a matter of principle, the fact that someone has attempted to avoid scrutiny is something that might cast doubt on their account?---Yes, I agree.

And as a matter of principle, by contrast, do you agree that the fact that someone

has made a prompt complaint or really an immediate complaint can be a matter weighing in favour of preferring their account?---I don't agree with that, because I've had numerous instances where a complaint has been made and there has been no evidence to support it at all.

I'm just asking, generally speaking, so I'm not saying that in every case where someone makes a prompt complaint, I'm asking you as the person who is engaged in fact finding, do you agree that that can be one matter that points in favour of supporting their complaint?---No, I don't agree.

But, do you agree though, that if there's consistency in a person's complaint, as they give it over time, for example, if they give it once, and they give it a subsequent time and there's no changes in it, that can be indicative of the truthfulness of that account?---Yes it can be taken into account.

And I'll just then turn to the contrast, when you're reviewing the account given by the police officer, or really, anybody in any fact-finding incident. Do you agree that if someone has a demonstrated tendency to act in a particular way in the past, that can throw some light on, potentially, how they acted on the incident occasion that you're reviewing? Do you agree with that?---No not particularly.

Have you had any training in fact finding or inference (inaudible)?---No I do, but you've got to take every incident into account. And just because someone has tendency that they've done certain things, that does not mean that they've done it then.

Sorry I'm not – I might have – I might not have given you the question clearly enough. I'm not asking you whether or not it means conclusively that they've done the thing. I'm asking you whether that can be relevant?---Yes it can be relevant.

Do you agree the converse of what I'd asked you about consistency in a complaint, do you agree that when you're reviewing a police officer's account, that if there are inconsistencies within that account, for instance, if they've said one thing at one time, and then later on they've said something else, that can tend towards casting doubt on the veracity of their account?---Yes it can be.

And would you also agree that to the extent that police officer's account is inconsistent with external evidence, that can cast doubt on the veracity of their account?---Yes.

In this incident, to – to go through each of those. Did you take into account the fact that Constable Rolfe had de-activated his body-worn camera before the alleged – well, before the – alleged use of force?---I don't think he actually put his camera on, off the top of my head.

I think you'll find that he de-activated it as he was walking into the grass on Anzac Hill. But it sounds that you're not sure - - - ?---Irrespective, he did not have his camera on.

And was that a matter that you positively took into account, as potentially showing an intent to avoid scrutiny?---No.

Okay. Was the fact that CW made an immediate complaint to police, caught on Constable Rolfe's partner body-worn camera, is that something that you took into account?---No. The issues – I'm not the one that took these things into account. It was my Professional Standards investigators. But it would have been taken into account I imagine.

I'm asking – I appreciate that you didn't do the initial PSC review, but you have come to this court and sworn an affidavit, attesting to your confidence in particular findings that that made, and so it's on that basis that I'm asking you the questions. I've asked you about the promptness of the complaint. Did – do you think the PSC would have considered, or rather, did you consider - - -

THE CORONER: Should they have.

MR MURPHY: Beg your pardon?

THE CORONER: Should they have.

MR MURPHY: I think I'll – given that this – the Assistant Commissioner's here as the face of the PSC, I think I will – think it would be hoped that his approach is indicative.

THE CORONER: Sure.

MR MURPHY: So as you were reviewing these matters, this matter in particular, did you take into account the consistency in CW's complaint, namely the fact that you made it from the body-worn video, and then he made it again in the record of interview?---Yes that was his account.

Did you take into account the fact that there was consistency there over time in the complaint?---No I do not.

Did you take into account the fact that six weeks earlier, Constable Rolfe had pushed over two men, in what you – as I understand it, agree, was an excessive use of force. Was that taken into account in determining whether or not to accept whether or not a finding could be made on this occasion?---Sorry, did you say six weeks later?

Six weeks earlier, Constable Rolfe had pushed over two men, as I understand it? ---No, this person wasn't pushed over from what I can gather.

But isn't that exactly what you investigated?---No, he – he was apprehended.

And his face made contact with the ground, that's correct?---Yeah, that's correct. But whether he was pushed over or whether he was ground stabilised. We don't have the evidence to determine that.

Well, even Constable Rolfe doesn't say he was ground stabilised. I mean he says he fell over?---That's correct. That's – and that's what we're saying. There is no body-worn evidence to determine exactly what happened at that point in time.

Okay. I apologise I'm taking so long with this witness, it's intended as one illustration, I won't be doing this for every – for the remaining that I'll address.

Did you take into account in reviewing this use of force what appeared to be inconsistencies between Constable Rolfe's version and the external evidence? And I say that because Constable Rolfe in his statutory declaration, which is accepted at 3-079 page 5, stated that he and Sergeant Kirkby arrived at CW at the same time. Whereas, the body-worn footage of Sergeant Kirkby clearly shows that that wasn't correct. Did you take into account that apparent discrepancy?---No.

Did you take into account, what appears to be an inconsistency in Constable Rolfe's versions, and it might be a minor one. But the fact that on the body-worn footage of Sergeant Kirkby, Constable Rolfe says that CW had "Fallen over in the dirt." Whereas in his statutory declaration, he suggests that CW had "dived", as in gone to ground, to try and hide from police. Did you take into account that apparent inconsistency in Constable Rolfe's version over time?---Yeah between an account, but could not determine either way, as to how the – Mr went to ground.

THE CORONER: It's not about what you could you determine. And I know it's late in the day. It's about whether or not you took these matters into account, in determining whether or not to accept or be persuaded by certain evidence?---No, did not take it into account.

So for example, if a complainant comes along, and gives two different versions, that would be perhaps a reason to say that they're unreliable, or inaccurate, and therefore, I couldn't accept their version?---That is correct, your Honour.

And the same for a police officer, who gives different versions, in his accounts, you would then be able to conclude I couldn't accept the version of that police officer? ---I understand, your Honour.

MR MURPHY: I put to you that your approach, as the head of the PSC, to this complaint, and – or to reviewing this complaint, and the matters that you did and didn't take into account, demonstrates the complete ineffectiveness for purpose of the PSC as a police complaints system. What do you say to that?---I do not agree.

And I put to you as a matter of fairness, that not only does it demonstrate that, it demonstrates, and I'm not saying conscious, but what appears to be sub-conscious bias of police investigating police, to be biased towards their own colleagues. What do you say to that?---No, I do not agree.

The final incident that I would like to take you to, is the incident of 24 September 2019. Which is when Constable Rolfe chased a person down the Todd Mall, who ultimately turned out to have done nothing wrong, apart from run from police. This is an incident again, where you've come to one view, and Detective Sergeant Barram has come to another. Do you agree with that?---Yes I agree.

Given that this event was recorded on body-worn footage, at least as to what is recorded, there's no factual doubt about what happened. It's about the perception about what was reasonable, do you agree with that?---Yes I agree.

Counsel assisting, Dr Dwyer, asked Superintendent Vicary some questions about this incident. And Superintendent Vicary said that "Different people will have a different view of what they see." And that was at transcript 3053. Do you agree with that? That different people have a different view of what they see on the body-worn footage of this incident?---Yes I agree.

And do you agree that different people might come to different views about what's necessary, proportionate, appropriate or reasonable, in the circumstances, based on that body-worn footage?---Based on their assessment of the body-worn footage, yes.

And do you agree that given the possibility for these different views, part of the explanation for that's got to be the reviewing person, the assessing person's own background experience, what they're taking into account when they're assessing the footage that they're viewing, and deciding whether it's reasonable. Do you agree with that?---Yes I agree.

And in those circumstances, don't you agree that there's a risk that police, when they're reviewing conduct of one of their colleagues, will bring to it, some sub-conscious bias in favour of that colleague, and won't sufficiently account for the interests of the complainant, do you agree with that?---Yes, there's always a risk.

There's always a risk when the investigation is being done internally in the police, do you agree with that?---No, I don't agree with that.

I think you just said there's always a risk?---No, there's a risk – you're saying the supervisor looking at the footage. But when we do PSC investigations it's not just us looking at the footage, it's also the Office of the Ombudsman doing that assessment as well, so that we have that independence.

You said in your statement that – and this is at par 109 – that, "The review of Constable Rolfe's use of force in this incident identified that supervisors have at times assessed the use of force as appropriate even when the force used is excessive". Do you agree that that's what the evidence shows?---Yes, I agree.

And you – is it fair to say that you attribute that to really those other senior police having a lack of proper training and a failure to follow procedures? Is that right? ---No, way. I don't agree that they've had a lack of proper training.

What do you – how do you explain the fact that multiple supervisors have assessed use of force as appropriate even where the force used is excessive?---I actually can't explain it. I can understand – well, understanding though I do not agree, re: supervisors. But they form relationships which is why we have now implemented the independent subject matter expert review. But I can not explain as to why a divisional superintendent has not determined that that – those incidents are excessive in the circumstances.

You can't explain it but can you exclude the possibility that it is part of the explanation that police are reviewing the conduct of another police officer, a colleague?---No, I can't determine that.

So you can't rule out that there may be some colleague bias, or police/police bias that's contributing to these failures to find that use of force was excessive? You can't rule that out?---I can't rule that out.

And certainly you'd agree with what Deputy Commissioner Smalpage said on Wednesday, that police are, "A fairly tightknit group of people"? That's from transcript 4153. You'd agree with that?---Police in general, yes.

And you don't see a problem, members of a tightknit community being responsible for being involved in the disciplinary proceedings of other members of that community?---Well, generally when we do a complaint investigation it goes out to the command and it is someone else who's not the supervisor or manager of that person doing that investigation.

But they're still part of the tightknit police community, that's right?---Yes.

I'll ask – I want to ask you a few questions now about concerns that have been raised by international bodies and the like about the impartiality of police investigating police. I'll ask the court staff to pull up a document, that is – and I'm not going to take you to this document, it's just a convenient – so I can throw these quotes. So it's an expert report that's been filed by NAAJA. I'm not going to – the only reason I'm taking you to it because there's some quotes there that I'd like you to comment on. The first is the inset quote from the UN Human Rights Committee. And the reason you these questions is about this idea of impartiality. So the first inset quote there, I'll just ask you to read that?---So is that marked 21?

Yes, that's right. I assume you disagree with there being any necessary need for concern that reports of excessive use of force are investigated by police itself? You'd disagree with that being any source of concern, necessarily?---Yes, I disagree.

And you'd disagree that it's necessary to establish an mechanism to carry out independent investigations, is that right?---No, well there's already independent oversight in relation to matters.

On that issue of oversight I don't – I'm satisfied with your answer there to the extent that it's illustrative. Can I ask the court staff to move to the next page? When you say independent oversight you're referring to the Ombudsman?---I'm referring also to Professional Standards Command, so you have – if it's being investigated in the field it's reviewed by the Professional Standards Command, and it's also reviewed by the Office of the Ombudsman. And if they're unhappy with how that investigation is going they then make recommendations for further.

The Ombudsman has essentially, for at least a lot of the complaints, a supervisory function rather than the employees of the Ombudsman actually doing the investigating, is that right?---Yes, they aren't doing the investigating but they look at every aspect of the investigation.

Could I ask you to read the first inset quote there starting with the words, "Supervision", from the European Court of Human Rights. I assume you disagree that supervision by another authority is an insufficient safeguard of the independence of an investigation? I've got about three negatives in that so I might reframe it for you. But would you agree that supervision by another authority is an insufficient safeguard, it's got to be fully and an external investigation? Do you agree or disagree with that?---No, I disagree with that. There needs to be a fully independent investigation.

Just in the few minutes before 4:30, ask you a few questions about – while this document is still up there. Not actual impartiality but perceptions of impartiality, so whether or not this complaint process that might be characterised as largely internal to police – I know you might cavil with that – but whether or not it's actually impartial, I'm going to ask you to reflect on where it might be perceived to be biased. You'd agree that perception's important, I think you said at the start of your evidence? ---Yes, anything can be perceived.

Do you agree that community perception of really the fairness and even-handedness of a police investigation – police complaints process is important?---Yes, it is important.

The coroner has before her a report of an inquiry that was conducted, called the Stephen Lawrence inquiry, in the UK. And it comes to a different view to the one that I understand you've expressed. It's an inquiry headed by a judge of the High Court of England and Wales, a retired Deputy Chief Constable, a Bishop, and the chair of the Jewish Council for Racial Equality. And it found – and I think this actually on the previous page we'll start – in the inset quote under, "In his landmark report", it found in the bottom sentence of that, "Investigation of police officers by their own or another police service is widely regarded as unjust and does not inspire public confidence". Do you agree that investigation of police by police doesn't inspire public confidence?---I agree that that can be the perception, yes.

And you agree that that can be a problem then?---I agree that there needs to be trust with community because police are the custodian of integrity and we need to have the trust of the community in everything that we do.

When you say police are the custodians of integrity what do you mean by that?---So everything that a police officer does, so as in code of conduct, integrity is the core to being a police officer. So we are the ones that have to demonstrate integrity and honesty at all times, as per our oath.

When you say custodians of integrity are you - - -?---It's my terminology, sorry.

Well it aligns, if I can say respectfully, very close to the Gelliot Review's assessment, which is that – and is it your understanding that part of the Gelliot Review looked at a civilian control model of police complaints, but thought that it wasn't practical because it removed an organisation's control of their integrity issues?---Yes, I agree with that.

And is that what you were trying to get to about the importance of police being custodians of their own integrity?---No, the importance of – well, it is, as in we need to supervise and because, as supervisors and managers, we manage our people and we need to ensure that our people are doing the right thing. So we are the custodians of integrity to examine and make sure that our staff are doing the right thing.

Your Honour, I've probably got about five minutes.

THE CORONER: Can you sit for another five?---Yes.

You're going to have to come back tomorrow, but if you're tired, you should just come back tomorrow?---No, it's fine, your Honour.

All right, well we'll try and finish your evidence or your questions, Mr Murphy.

MR MURPHY: In terms – you acknowledge – I think you acknowledged it earlier in your response to questions by Dr Freckelton that there is a problem at the moment with community confidence in a police complaint system. You'd agree with that? ---Yes, I agree.

And your evidence – well, would you agree that one potential response to that would be to establish a completely independent body to deal with complaints?---That is one possible response, yes.

And but you would adopt, would you, the Gelliot review's response to that which I just read to you, and this appears at page 30 of the Gelliot review, that the third oversight model of splitting and control has limited practical application in policing jurisdictions as this model removes an organisation's control of their integrity issues and is limited in its capacity to influence management of course (inaudible) and culture. Is that why you wouldn't support a model of civilian control?---Yes, I do.

Sorry, that's why you wouldn't support – that's the reason?---That's why I wouldn't support it, yes correct, your Honour.

And what you would support is something like “new professional excellence system” that the Gelliot Review suggests from page 122 of that review onwards. Is that right?---Yes, that's correct.

Could I just ask the court staff to bring up an appendix to that review, which appears at PDF page 247. Sorry, PDF page 247 of the third affidavit of the Assistant Commissioner.

And if I could, Assistant Commissioner, it's at page 168 of the Gelliot Review, if you've got that in front of you while it's being brought up?---Yes.

This model of new professional excellence that the police, in principle, support and I understand that you've just said you support, is it correct – well at least, it's depicted in appendix 3 to the Gelliot review, is that right, in a pictorial form?---Yes, that's correct.

And from my review of that, is it correct that the only reference to the Office of the Ombudsman is on the top left-hand corner of the (inaudible) and upper middle of the page where there's a reference to the “Office of the Ombudsman; random audit role only”. Am I missing something there or is that what that appendix appears to suggest?---That's what it appears to suggest but we're still yet to examine and fully digest that model.

Okay.

THE CORONER: Can you just tell me where that is, that random - - -

MR MURPHY: It's the third dot point down in the middle of the page, not in any box.

THE CORONER: Okay.

MR MURPHY: Upper middle of the page.

THE CORONER: Yes, I can see that.

MR MURPHY: I should note, your Honour, that it – and it might be a matter for re-examination, but there is reference to the Ombudsman having what appears to be something more than a random audit oversight role earlier in the report. Perhaps it's just indicative of uncertainty about exactly what that role will look like. But my question to you, and no need to bring that up (inaudible), Assistant Commissioner, is that model represented by that chart, or in fact by the Gelliot report, that's been preferred over the civilian control model. That's right?---We really have not determined fully, because we need to have consultation with all the stakeholders as to what would be the preferred model.

Okay. But the Gelliot report has preferred it and NT Police have indicated in principle agreement to the Gelliot report. That's right?---Yep, we've agreed in

principle to the recommendations and to consider all the recommendations. As stated previously, there still is a lot of work to be done in consultation with stakeholders as to what would be a suitable and achievable model to implant.

I've got about three questions left and one of them is that the reason – or do you agree that the reason that Commander Gelliot didn't prefer the control model as shown at the middle of page 149 of the Gelliot review, and I'll just read that out,

“The review considered recommending that high level investigations be undertaken at the Office of Ombudsman, consequently generating complete independence. However, it is apparent there is limited capability in the local community with the requisite skill sets for these roles and current investigative expertise and specialist resources lie within the Northern Territory Police.”

Is that – do you endorse that as being one reason that it appears that it's better that police are the ones investigating these high level of investigations?---Yes, I do because police currently have the investigative ability to do in-depth investigations and get data, the officer (inaudible) currently does not have that resource.

My final question, and if the court doesn't have time to bring up recommendation 226, the Royal Commission into Aboriginal deaths in custody, all I'm asking you is - - -

THE CORONER: Recommendation?

MR MURPHY: 226.

Assistant Commissioner, I'm going to put to you, and it's not a memory test, I'll try and bring this up onto the screen, but one of the recommendations of the Royal Commission 30 years ago that traversed some of the same issues that this Coroner inquest is traversing is that: “That complaints against police should be made to the investigated by and behalf and adjudicated upon by a body or bodies totally independent of police services.” There's a lot more detailed recommendation there and that, in fairness, includes the possibility of police being involved in the investigation, but certainly not adjudicating upon the complaint. If you take it from me that that was one recommendation 30 years ago, would you say that the proposed model of the Gelliot Review is totally independent of police services?

---Sorry, I'm not quite sure what you're asking there, when you say “totally independent of police services”.

Would you say that the people adjudicating upon police complaints under the Gelliot model, if that's implemented, are totally independent of police services?---Yes.

Are you saying that in reference to the people in the Office of the Ombudsman?---Yes, that's the only independence at the moment.

Yes. But not - - -?---Other than the Independent Commissioner against Corruption.

But not the police who are involved in reviewing the complaints and determining the complaints that don't go to the Ombudsman. You wouldn't say that they're totally independent, would you?---You can't say they're totally independent, no.

Those are the questions, your Honour. And I apologise to the witness in court for the time.

THE CORONER: Thank you. Just before we adjourn for the day, Dr Dwyer, what's the plan for tomorrow?

DR DWYER: The plan for tomorrow, your Honour, with great thanks to the current witness for his flexibility, is to start with Professor McCullough and then to move to Mr McDevitt. And it is anticipated that Assistant Commissioner Porter will return on Wednesday. We were going to ask my learned friends appearing for the Northern Territory Police whether or not Assistant Commissioner Porter would make himself available tomorrow afternoon in the event that those witnesses finish early. But we appreciate that Assistant Commissioner Porter has a lot of other obligations to attend to, so we'll continue to have those discussions. But it's very difficult to estimate those first two witnesses. They could take all day. They could finish early.

THE CORONER: All right. Then we'll – sorry, did you want to say something, Mr Freckelton?

DR FRECKELTON: (inaudible)

THE CORONER: Sure.

DR FRECKELTON: The first is that at 10 o'clock tomorrow, (inaudible) called for a remote appearance from Darwin in the matter. If I can be excused from that time - -
-

THE CORONER: Sure.

DR FRECKELTON: - - - when the phone rings. The second one, your Honour, arises from an unexpected (inaudible) from the application that was made last Monday by Mr Boe, in relation to the intent. And I raise this now in terms of timing, because I can say (inaudible) my client's with respect to the accusation of rejecting the application ought be dismissed, both in terms of an allegation of contempt and (inaudible) attempt to pervert the course of justice.

THE CORONER: Sorry, did I make a ruling that there should be submissions in writing?

MR OFFICER (?): Your Honour, I simply raise this point. At par 16 of Mr Boe's latest submissions, he says that every party should be given an opportunity to be heard. And he then goes to say that the procedure you might adopt is the first (inaudible) that you identify with particularity, the conduct which you propose to make a referral or complaint. And then if you weren't proposing to do so, allow parties to

supposedly allegedly engaged in that behaviour, to – the opportunity to make submissions.

I simply raise it now, your Honour, in terms of timing, because it might be that Ms Campion and Ms Credlin, Mrs Rolfe, want to be heard before Friday, and I'm not sure whether or not they've been informed from the court about the application so that they can be represented, either in court, or in submissions. But the way around it, your Honour, is the position of my client is that the accusation's rejected and ought be dismissed - - -

THE CORONER: Sure, I can hear you. But I've asked for submissions in writing. I'm happy for you to put anything you want to say in response in writing. And then a decision is going to be made about whether or not there is any time allocated for oral submissions.

MR OFFICER: I'm raising it in the context of whether the other parties have been informed of this. I don't (inaudible) and I said it on the first day.

THE CORONER: Sure, so if you want to have a discussion with counsel assisting, about in fairness, who should be notified, I'm very happy for you to have that discussion with counsel assisting.

MR OFFICER: Yes, your Honour - - -

THE CORONER: And if you're not happy with the information that is relayed, then it would be an appropriate time to raise it in court time.

MR OFFICER: Thank you, your Honour, I'm just simply raising this point. What Mr Boe says, if you're not proposing to make a (inaudible) that's the process in which he steps out in his submission. Which means other parties don't need to be heard. Submissions don't need to be filed. And you can make your decision, about (inaudible) proposed. And that (inaudible) the matter, I'm just simply looking at it from an efficiency point – point of view. That's all I'm raising it for.

THE CORONER: Thanks.

We'll adjourn until 9:30 tomorrow.

ADJOURNED