

## Coronial Investigation Report

Death in Custody of [REDACTED] Walker at Yuendumu  
on 9 November 2019



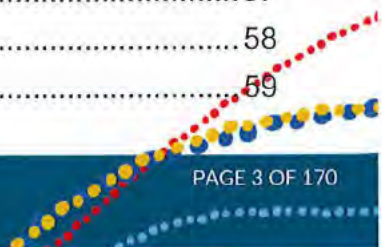
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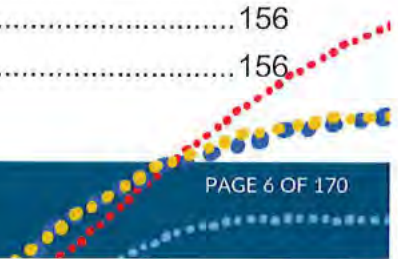
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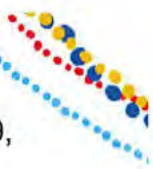
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Northern Territory Police

memo

		<b>PROMIS:</b> 9129856
<b>To:</b>	The Coroner Assistant Commissioner Anticich	<b>TRM File:</b>
<b>From:</b>	David Proctor APM, Commander, Regd No. 1532	<b>TRM Doc:</b>
<b>Subject:</b>	FINAL INVESTIGATION REPORT - [REDACTED] [REDACTED] WALKER – DEATH IN CUSTODY - YUENDUMU – 9 NOVEMBER 2019	<b>Date:</b> 31 August 2021

## Introduction

### The Fatal Shooting of Kumunjayi Walker

On the 29 October 2019, [REDACTED] Walker (Kumunjayi Walker) removed his electronic monitoring device and absconded from the Central Australian Aboriginal Alcohol Programmes Unit (CAAPU) where he was undertaking a residential rehabilitation program as part of a 12-month good behaviour bond he had entered in to on the 21 October 2019.

Kumunjayi Walker returned to the Yuendumu community. On the 6 November 2019, police at Yuendumu attempted to arrest Walker on an outstanding warrant for breach of suspended sentence. Due to the actions of Kumunjayi Walker, threats of violence and his absconding from police, this attempt was unsuccessful.

On 9 November 2019, police officers from the Alice Springs Immediate Response Team (IRT), who had been sent to Yuendumu to provide support to local officers, undertook patrols of the Yuendumu community with a view to locating and arresting Kumunjayi Walker.

Police inquiries lead them to House 511 where someone was sighted inside. Two police officers entered the house and confirmed the identity of the person as Kumunjayi Walker. The officers attempted to make an arrest and a struggle ensued between Kumunjayi Walker and the police officers, during which one of the officers (Constable Zachary Rolfe) was stabbed by Kumunjayi Walker, Constable Rolfe (Rolfe) responded by discharging his police issued firearm at Kumunjayi Walker. The injuries sustained by Kumunjayi Walker were fatal.

At the time Kumunjayi Walker received his fatal injuries police were attempting to effect his arrest and place him into custody. Accordingly, his death is a 'reportable death' under the provisions of s.12 (1) of the *Coroners Act 1993* [NT]. As part of the subsequent police response, a coronial investigation was commenced, this is the report of that investigation.

## Focus of the Coronial Investigation

The coronial investigation arising from the death of Kumunjayi Walker is undertaken on behalf of and at the direction of the Coroner. The coronial Investigation has two principal objectives:

- to investigate the circumstances surrounding the death of Kumunjayi Walker; and
- to investigate and report on the actions of police and other agencies in order to assess whether they could be improved.

## Scope of the Coronial Investigation

In addition to the principal objectives detailed above, as part of the investigation into the origins, course, and outcome of the death of Kumunjayi Walker, at the direction of the Coroner the coronial investigation team were directed to look at a wide range of matters which included:

- Military firearms/defence training v police firearms/defence training;
- Senior police actions in the lead up to and post the death of Walker;
- The involvement of the IRT in the death of Walker;
- The life history, including military employment of Zachary Rolfe;
- The life and Criminal History of Walker including any likelihood of Walker potentially suffering from FASD or other cognitive impairment.
- Governance systems including complaints against Police and actions, if any, taken by PSC and supervisors;
- All policies including standard operating procedures, instructions, general orders identified as relevant to this investigation (this includes adherence to or any disregard of previous coroners recommendations);
- Any issues arising as identified by the legal representatives of the Walker family;
- Recruitment records and interviews with all police who trained with Constable Zachary Rolfe;
- Recruitment policies of other Australian Policing Agencies specifically pertaining to ex-defence personnel;
- Militarisation of policing in general;
- Triaging of Serious injuries by police; and
- Cultural Bias / Institutional Racism within the NT Police.

It should be noted that as a result of Constable Zachary Rolfe being charged with the offence of murder, matters that may fall under the current criminal proceedings have not been fully investigated or reported on by the coronial investigation team in this report.

It is anticipated that those matters will be reported on after the criminal proceedings are complete, which will also enable the investigation of any matters that may arise from the criminal proceedings.

## Preliminary Information

### Reported When and by Whom:

Northern Territory Police - Sergeant Julie Frost at 2040 hours, 9 November 2019

### Deceased's Details:

**Name:** ██████████ Walker

**Address:** House 577, Yuendumu

**D.O.B:** 13/10/2000

**P.O.B:** Alice Springs

**Occupation:** Unemployed

**Employer:** N/A

### Date and Time of Death:

2036 Hours, 9 November 2019

### Location of Death:

Yuendumu Police Station

### Medical Assistance at the Scene/Death:

Yuelamu Medical Staff attended Yuendumu Police Station and confirmed Walker deceased. Police provided medical assistance, including administering cardio-pulmonary resuscitation (CPR) prior to death.

### Identification:

The deceased was formally identified via fingerprint examination.

### Certification:

Death was certified by the Yuelamu nurses (Lorraine Walcott & Heather Zanker)

### Next Of Kin:

Rekeisha Robertson (Wife)

Leanne Oldfield – Adoptive mother

Selena Lee Lane – Mother (Deceased)

Frank Walker - Father – (Deceased)

## Medical Practitioner/Hospital:

Alice Springs Hospital/Yuendumu Health Clinic

## Autopsy:

Conducted by Forensic Pathologist, Dr Marianne Tiemensma

## P.C.O.D:

1a) Gunshot injury to chest and abdomen

## Toxicology:

### Alcohol:

Toxicology results from the deceased show that 0.012% alcohol was detected in the urine and 0.018% alcohol was detected in the preserved iliac vein blood.<sup>1</sup>

### Drugs:

Toxicology results from the deceased show that traces of Cannabis were detected in the preserved iliac vein blood.<sup>2</sup>

### Medications Deceased Was Taking:

Toxicology results show that no other drugs (listed in the scope of analysis) were detected in the preserved iliac vein blood.<sup>3</sup>

## Witnesses:

Civilian – Statements were obtained from 77 civilian witnesses.<sup>4</sup>

Police – Statements were obtained from 152 police witnesses.<sup>5</sup>

Medical – Statements were obtained from 15 medical personnel.<sup>6</sup>

## Photographs:

Scene photographs and video recording of scene was undertaken by Senior Constable Ian Spilsbury (Folder 60, Folio 8).

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<sup>1</sup> Refer toxicology report: Folder 1, Folio 7

<sup>2</sup> Refer toxicology report: Folder 1, Folio 7

<sup>3</sup> Refer toxicology report: Folder 1, Folio 7

<sup>4</sup> Refer Folders 52-58

<sup>5</sup> Refer Folders 32 to 51

<sup>6</sup> Refer Folder 59

## Background and Context

### Kumunjaya Walker – Background

Kumunjaya Walker was born on 13 October 2000, at Alice Springs Hospital. His biological parents, as recorded on his birth certificate, were Selena Nambajimba Lee Lane (born 13/2/1982) and Frank Walker (born 1/10/1970). Both failed to care for Kumunjaya Walker and by the time he was 12 months old he was taken into the care of a relative, Leanne Oldfield.

Between the ages of 4 to 11 years old, Kumunjaya Walker lived with Oldfield in Katherine. He was exposed to significant domestic violence between [REDACTED] [REDACTED] for much of this time. Both his biological parents were deceased by this time.

Kumunjaya Walker returned to Yuendumu community when he was 12 years old. Shortly thereafter [REDACTED] Walker's family were unable to provide effective parental control over him, describing his behaviours as unmanageable and out of control.

Kumunjaya Walker was enrolled at MacFarlane Primary School (Katherine) from 2007 to 2010, and Yuendumu School from 2013 to 2014. Both schools identified him as having special needs.

Kumunjaya Walker disclosed varying degrees of alcohol, volatile substance, and drug exposure from age 13 and [REDACTED]. He was referred to multiple youth diversionary and drug/alcohol rehabilitation programs including Mt Theo, Bush Mob, DASA and CAAAPU. All the interventions were largely unsuccessful, with most services reporting Kumunjaya Walker's lack of enthusiasm and participation in the programs.

He commenced a domestic relationship with Rekeisha Robertson around February 2016. Both lived at Yuendumu during the period they were together.

On 2 May 2017, a Forensic Psychological Assessment was completed on Kumunjaya Walker by Forensic Psychologist Kate Crawley. He was diagnosed as suffering from an intellectual disability of mild-moderate severity.

On 21 October 2019, Kumunjaya Walker absconded from CAAAPU in breach of his suspended sentence order and returned Yuendumu Community. On 5 November 2019 a warrant was issued for his arrest and on 9 November 2019 he was fatally shot by Constable Zachary Rolfe during an attempted arrest at House 511 Yuendumu Community.

### Summary of Criminal History and Restraint History – Kumunjaya Walker

As detailed in the above paragraphs, during his life, Kumunjaya Walker had a history of criminal offending which resulted in his spending a significant period of his life under some form of restraint.

The table and charts below provided a visual representation of his history of offending and the time he spent under restraint.

Criminal History	Convictions
Property Crime	
Fail to Comply with Court Orders	
Assaults	
Breach Bail	
Escape Custody	
Other offences	
<b>Total</b>	
<b>Recorded convictions</b>	
Recorded convictions	
Proved – No conviction recorded	
<b>Location of Offending</b>	
Yuendumu Community	
Other	

A. WALKER – INTERVENTION HISTORY

		2019
In Custody		218 days 70%
Court Order Suspended Sentence		7 days 2%
On Bail		67 days 21%
Arrest target		21 days 7%
Not Under restraint		0

Residential Intervention Programs		53 days 17% (While on Court Order / Bail)
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## Summary of Medical History: Kumanjayi Walker

Territory Families have an extensive Child Protection history for AW, receiving notifications of neglect and inadequate care/supervision by his carer/s over the course of his life. Detailed below is a summary of the medical history of Kumanjayi Walker (KW).

1. 13/10/2000 – (KW) was born on 13 October 2000, at Alice Springs Hospital. At birth, KW was assessed as being a “morphologically normal male infant. Discharged into care of Selena Lane on 17/10/2000.
2. 18/10/2000 – Selena Lane presented to Haasts Bluff Clinic with KW reporting breast feeding issues.
3. 29/10/2000 – medevac'd to Alice Springs Hospital. Diagnosis with “failure to Thrive”. Lane was assisted with bottle feeding education. Discharged into Selena Lane’s care on 20/11/2000.
4. 4/3/2001 – KW was admitted to Alice Springs Hospital in care of Selena Lane. Diagnosis – Right herniotomy requiring corrective surgery. Discharged into care of Selena Lane on 19/3/2001.
5. 1/4/2001, KW was taken to the Alice Springs Hospital Emergency Department by Leanne Oldfield for a temperature and cough. AW was not admitted into the hospital and released back into the custody of Leanne Oldfield.
6. 12/5/2001, KW (7 months old) was admitted to Alice Springs Hospital via Kintore Health Clinic with his maternal Grandmother Anne Dixon @ Lane. A referral letter from Pintubi Homelands Health Services (Kintore Clinic) reported KW presented to the clinic with diarrhoea and vomiting from 10 May 2001. Many presentations at Kintore with diarrhoea, vomiting and being unwell. Diagnosis: Gastroenteritis (Rotavirus), Pneumonia and deficiency anaemia. Discharged on 6/6/2001 in to care of Anne Lane and Joseph Lane (Selena Lane’s parents).
7. 17/6/2001, KW (8 months old) was medevac'd to Alice Springs Hospital via Haasts Bluff with Anne Lane (Grandmother). Diagnosis: salmonella and pneumonia. Social issues (not meeting standard millstones sitting up / eating solid foods etc. Discharged on 29/6/2001 into the care of Leanne Oldfield at Warlpiri Camp, Alice Springs.
8. 6/9/2001, KW admitted to Alice Springs Hospital. Diagnosis: pneumonia, conjunctivitis, excoriated groin and buttocks (nappy rash) and meningitis. Discharged into the care of Leanne Oldfield of House 4 Warlpiri Camp on 18/9/2001.
9. 17/10/2001 – KW admitted to Alice Springs Hospital’ Diagnosis: pneumonia, conjunctivitis, meningitis and CSOM (Infection of ear drum). Discharged into care of Leanne Oldfield on 21/10/2001.
10. 25/10/2001 - Tahnia Edwards (Registered Nurse) from Congress Medical Centre made contact with TF Case Worker Hassall requesting assistance in locating Leanne Oldfield and keep her advised of the child’s whereabouts. KW flagged as “At Risk” and his weight

and health required to be monitored.

11. 25/11/2001 - KW (13 months old) medevac'd to Alice Springs Hospital from Ti-Tree, with grandmother, Margaret Brown. Diagnosis: lower respiratory tract infection, giardia, left CSOM (ear infection), chronic FTT and social issues - referred to FACS. Discharged on 30/11/2001 into the care of Margaret Brown.
12. 12/2/2002 - KW (17 months old), admitted into Alice Springs hospital from Ti Tree. Diagnosis: Gastroenteritis (Giardia). Discharged on 17/2/2002 in care of Margaret Brown.
13. 11/7/2002 – KW presented with Leanne Oldfield at Alice Springs Emergency Department. High temperature, mucky eyes and diarrhoea. Child not admitted.
14. 26/9/2002 - KW (23 months old) medevac'd to Alice Springs Hospital via Ti Tree with Leanne Oldfield. Diagnosis: upper respiratory infection, gastroenteritis and weight loss (Failure to Thrive). Discharged into care of Leanne Oldfield on 9/10/2002.
15. 5/11/2003 - Katherine Emergency department. KW presented with mum (Leanne Oldfield). Multiple lacerations on right and left leg. History provided by mum, apparently caused by glass from broken window during attempted break-in.
16. 24/1/2006, KW (5 ½ years old) admitted to Alice Springs Hospital in the care of Margaret Brown. Diagnosis: pneumonia. Discharged on 26/1/2006.
17. Wurli Wurlingjang Health Service – Katherine  
24/9/2007 – KW brought in by carer – issues with hearing – Right TM – Healing perforation visible.
  - 17.1. 25/10/2007 – KW failed to attend for follow-up (hearing test)
  - 17.2. 1/11/2007 – KW failed to attend for follow-up (hearing test)
  - 17.3. 2/11/2007 – KW failed to attend for follow-up (hearing test)
  - 17.4. 9/11/2007 – KW failed to attend for follow-up (hearing test)
18. Wurli Wurlingjang Health Service – Katherine
  - 18.1. 15/1/2008 – KW brought in by mother (Leanne Oldfield) for NT Intervention Child Health Check.
  - 18.2. 16/1/2008 – KW at clinic for:
    1. Dry preformation right ear and concerns re hearing
    2. Dental referral
  - 18.3. 15/2/2008 – KW failed to attend for follow-up appointment.
  - 18.4. 21/2/2008 - KW failed to attend for follow-up appointment.
  - 18.5. 31/3/2008 - KW failed to attend for follow-up appointment.
19. Wurli Wurlingjang Health Service – Katherine  
1/5/2008 – KW presented with mum for a toothache.
20. Wurli Wurlingjang Health Service – Katherine  
14/5/2008 – KW presented with mum. Mum requesting for son's ears to be checked. Concerned that he may be deaf, has trouble listening. On examination Perforation left ear. Foreign body in right ear. Looks like a rock in Ear. Discharge from left nostril.

21. Wurli Wurlingjang Health Service – Katherine  
20/10/2008 – KW brought in for treatment of boils.
22. Wurli Wurlingjang Health Service – Katherine  
28/10/2008 – KW – home visit for trachoma.
23. Wurli Wurlingjang Health Service – Katherine  
29/10/2008 – Health check via school – eye check / ear check – Hearing test follow-up required.
24. Wurli Wurlingjang Health Service – Katherine  
5/1/2009 – KW presented to the clinic with infected toe on right foot requiring lancing.  
12/1/2009 – KW attended for follow-up re toe infection. Dressings changed.
25. Katherine Emergency Department  
12/1/2009 - Admitted into paediatric ward - referral from Wurli Wurlingjang clinic re infected toe. X-Ray  
Diagnosis: Cellulitis of right big toe  
Discharged on 14/1/2009
26. Katherine Hospital  
1/5/2009 – admitted for day surgery – Dental retirement  
Procedure under general anaesthetic – 8 teeth extracted / 4 teeth restoration
27. Wurli Wurlingjang Health Service – Katherine  
18/12/2009 – KW presented to clinic with ear pain. Referred to Government Centre for hearing test.
28. Yuendumu Community Health  
1/2/2014 - Presented with pain after traditional circumcision ceremony.  
Diagnosis: Phimosis with balanitis
29. Alice Springs [REDACTED]  
24/07/2014 – Treated for syphilis
30. Yuendumu Community Clinic  
21/9/2015 – presented with a laceration to index finger.
31. 12/8/2016 - [REDACTED] from Yuendumu Community. During transport, the [REDACTED] vehicle conveying KW hit a cow on the road. KW did not sustain any injuries however was taken to Alice Springs Emergency Department and assessed as “Fit [REDACTED]”.
32. 6/3/2017, KW was admitted into Alice Springs Hospital for multiple dog bites. The injury sustained when [REDACTED]. He was taken to the operating theatre the same day and underwent debridement with washout. His operation was without complication. KW was discharged the following day with oral antibiotics.
33. Yuendumu Community Health  
19/4/2018 – KW attended clinic for treatment of STI's

34. Alice Springs [REDACTED]  
17/7/2018 – KW treated for wrist pain post [REDACTED]  
[REDACTED]
35. On 21/7/2018 [REDACTED] KW was admitted to AS Hospital for a laceration to left eyebrow after hitting his head on the concrete floor, injury self-inflicted when he was refused the use of a phone. The wound was cleaned and sutured. He was released on same day.

A comprehensive report detailing Kumunjayi Walkers background is contained within the Coronial File.<sup>7</sup>

## Constable Zachary Rolfe - Background

Zachary Brian Rolfe (Rolfe) was born in Canberra on [REDACTED] 1991 to mother Deborah Rolfe and Father Richard Rolfe. He has two older brothers [REDACTED]

Rolfe lived in Canberra as a child and attended Canberra Grammar School between 2004 and 2009. On completing his schooling Rolfe was employed at his father's automotive business. During this time, he saved enough money to travel overseas (through Europe).

On his return to Australia, he commenced the process of applying to become a member of the Australian Defence Force (ADF).

On 18 January 2010, Rolfe made application to join the Australian Army as a rifleman. In his application he states that he 'wanted to push himself, learn and have an exciting and challenging career.'<sup>8</sup> On 26 October 2010, Rolfe commenced employment as a rifleman recruit with the Australian Army.

## Australian Defence Force

Rolfe completed basic training at Army Recruit Training Centre in Kapooka and conducted Initial Employment Training (IET) at the School of Infantry, Singleton. After completion of his basic training Rolfe was posted to 1 Royal Australian Regiment (1RAR), Lavarack Barracks, Townsville.<sup>9</sup>

Rolfe received extensive training as an Australian Army infantry soldier, which included, weapons, communication and first aid training. He completed weapons training on a range of weapons and completed competencies in the handling and use of pyrotechnics, grenades, and grenade launchers.<sup>10</sup> During his service in the Army, Rolfe also went on to complete the basic signals course (2011), basic reconnaissance course (2012) and the combat fitness leader's course (2013).

In 2011, Rolfe commenced playing rugby union with the Army and was selected to participate in the Army Rugby development camp and the Australian Services Rugby Carnival. In 2012, Rolfe was selected to participate in the Army Rugby development camp at the School of Infantry in Singleton.

<sup>7</sup> Refer Folders 4 – 10 of the Coronial File

<sup>8</sup> Refer extract of ADF Employment File : Folder 11 Folio 4

<sup>9</sup> Refer extract of ADF Service Record, p.2 – Folder 11 Folio 5

<sup>10</sup> Refer extract of ADF Service Record, p.3-5 – Folder 11 Folio 5

On 3 May 2012, while participating in the rugby development camp, Rolfe and another soldier stole a packet of tobacco from another soldier's locker. Rolfe was removed from the training camp and returned to his unit.

An internal military investigation was conducted and on 6 September 2012, Rolfe plead guilty at a military trial to a charge of theft. Rolfe was sentenced by his Commanding Officer to 8 days restriction of privileges and a \$500 fine (which was suspended).

On 13 November 2012, because of his conviction, Rolfe was served a termination notice (notice to show because why employment should not be terminated) by his Commanding Officer.

Rolfe submitted a response to his notice to show cause, and on 24 April 2013, a determination was made that Rolfe's employment should not be terminated. Rolfe was instead placed on formal warning period for 24 months.<sup>11</sup>

In January 2014, Rolfe participated in force preparation training prior to deployment to Afghanistan. Rolfe deployed to Afghanistan as part of Operation "Slipper" and remained on deployment between 9 July 2014 and January 2015 where his platoon operated as a force protection element.

On 28 August 2014, whilst on deployment in Afghanistan, Rolfe made application to complete the 2015 Special Forces selection process. This application was not supported by his Commanding Officer who cited the fact that Rolfe was on a two-year formal warning for theft as reason for the non- approval.<sup>12</sup>

Rolfe returned to Australia and completed his deployment to Afghanistan in January 2015. On 4 May 2015, after serving 4 years and 7 months Rolfe transferred from permanent service to the Active Reserve Force within the ADF.<sup>13</sup>

For his service in the Australian Army, Rolfe was awarded the Afghanistan Medal, the Australian Active Service Medal with clasp (ICAT) the NATO Non-Article 5 Medal with clasp (ISAF), the Australian Defence Medal and the Australian Operational Service Medal (Greater Middle East Operation).

## Post Australian Defence Force

After resigning from the ADF, Rolfe returned to Canberra. He commenced employment as a law clerk at Maliganis Edwards Johnson (a law firm at which his mother is a partner).

Between 2 October 2015 and 23 November 2015 Rolfe participated in a training course conducted by Trojan Securities International in Arkansas, USA. The course focused on advanced tactical and firearms familiarisation, close personal protection, risk management, urban warfare and driving in hostile environments.

### *Applications for Police Forces*

From December 2015 to February 2016, Rolfe submitted several applications to join Australian Police Forces.

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<sup>11</sup> Refer extract of ADF Employment File – ROLFE Conduct Record – Folder 11 Folio 6

<sup>12</sup> Refer ADF Employment File – Application for Special Forces Selection – Folder 11 Folio 7

<sup>13</sup> Refer ADF certificate of service – Folder 11 Folio 8

Rolfe applied to join the Victoria Police Service on 30 December 2015. He passed the Victoria Police entrance exam on 16 January 2016 and was sent an application pack which he returned on 3 February 2016. Rolfe withdrew from the Victoria Police recruitment process on 2 June 2016 citing 'personal reasons'<sup>14</sup> (it should be noted that Rolfe also received an offer of employment from the Northern Territory Police on 22 April 2016).

Rolfe made application to join the Western Australia Police Service during 2016, however he did not follow this process through.

On 1 February 2016, Rolfe applied to join the Queensland Police Service. In his application Rolfe did not disclose a fine he had received for Public Nuisance- Violent Behaviour (04/04/2011) issued by Queensland Police.

On 2 February 2016, Rolfe applied to join the Northern Territory Police Force (NTPF).

On 7 March 2016, Queensland Police informed Rolfe (by email) that failing to disclose the public nuisance incident was an integrity breach, and he was excluded from reapplying for the Queensland Police Service for 10 years.<sup>15</sup>

### Northern Territory Police Recruitment Process – Constable Zachary Rolfe

The process for a person to apply to the NT Police is to submit a NT Police Constable Application Form, providing personal, employment history, criminal history, and medical information for assessment. Page one of the application details that failure to disclose information may result in the application not being processed or once appointed, the termination of your appointment. Applicants also complete a "Consent and authority to undertake background enquiries".<sup>16</sup>

On receiving a completed application, vetting is undertaken by the Police Recruitment Section, if complete and no integrity issues are identified, the applicant is invited to attend the written and physical assessment centre.

Rolfe completed the required application and provided certified true copies of his birth certificate, education, and training certificates received from Trojan International.

In his application, Rolfe marked both the 'Yes' and "No" boxes when answering the question: *"Have you previously applied to join any other police service?"*, it is noted that the 'Yes' box is then crossed out.

The reasons for Rolfe failing to disclose his application to Queensland Police and Victorian Police (and most likely Western Australia Police) are not known, noting that his application to join the Queensland Police was made the day before his application to join the Northern Territory Police.

In his application, Rolfe failed to disclose the disciplinary matters listed in his ADF employment records. He marked "No" when answering the question: *As a member of the defence force "Have you ever been the subject of any complaints, internal investigations or ever had any disciplinary action imposed on you?"*<sup>17</sup>

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<sup>14</sup> Refer email from Victoria Police recruiting officer dated 20 May 2020 including extract of ROLFE's Application for Victoria Police – Folder 11 Folio 12

<sup>15</sup> Refer QPS Recruitment Application, - Folder 11 Folio 13

<sup>16</sup> Refer Statement Sergeant Kevin Agnew, p.1 – Folder 11 Folio 14

<sup>17</sup> Refer Rolfe NTPF recruiting file, p.44 – Folder 11 Folio 15

The reason for failing to disclose the discipline matters is unknown. No checks were undertaken with the ADF to confirm the information or disciplinary history supplied by Rolfe. NTPF intelligence staff conducted routine probity checks on Rolfe, these checks reported no adverse findings.

The absence of checks on the ADF information and any adverse information in the probity checking meant that Rolfe progressed in the recruitment process.

On 28 February 2016, Rolfe undertook psychological testing with Australian Institute of Forensic Psychologists, a third-party recruitment company employed by the NTPF. In prediction ranking, Rolfe tested as above average to excellent. In Overall Potential of Suitability (OPOS) rating, Rolfe tested as "excellent potential".<sup>18</sup>

While the report is overwhelmingly positive regarding Rolfe's employment prospects, it did note that:

*"After making a mistake, Zachary is less likely than many others to accept responsibility. He may brush off the significance of the error, seek to minimise his own role, or to blame others"*<sup>19</sup> and;

*"The 'Aggression' score is above average. Whether Zachary will act with firm assertiveness or frank aggression cannot be determined from this scale alone"*<sup>20</sup>.

The psychological report also notes that friction between Rolfe' and his father is a pattern that:

*"has frequently found to be associated with later resentment of authority figures in highly structured organisations in which employees are expected to comply with strict procedures. In the present case, other data confirm this could be a problem"*.<sup>21</sup>

The report recommendation was that Rolfe receive further evaluation with comprehensive report and structured interview.

On 16 March 2016, Rolfe progressed to the interview stage of the recruitment process. He was interviewed by a three-member panel including Superintendent Sachin Sharma, Sgt Kevin Agnew, and head psychologist Bruce Van Haeften.

The interview process is a 90-minute series of questions formulated by the AIFP and asked by the three-member panel.

SHARMA notes: *"Well rounded man... recommends advance"*.

AGNEW notes; *"...should develop into a good solid (sic) Recommend advance"*

HAEFTEN notes *"...prime candidate for future development within the organisation. Recommend advance"*<sup>22</sup>

During his interview, Rolfe was asked, "Did you have and disciplinary problems when you served in the military?" Rolfe again failed to declare his ADF disciplinary matters.<sup>23</sup>

<sup>18</sup> Refer AIFP Proven Applicant Profiling, 2016, p-21 – Folder 11 Folio 17

<sup>19</sup> Refer AIFP Proven Applicant Profiling, 2016, p.7 – Folder 11 Folio 17

<sup>20</sup> Refer AIFP Proven Applicant Profiling, 2016, p.10 – Folder 11 Folio 17

<sup>21</sup> Refer AIFP Proven Applicant Profiling, 2016, p.15 – Folder 11 Folio 17

<sup>22</sup> Refer Interview Panel Recommendations – Constable Squad 129/2016 – Folder 11 Folio 18

<sup>23</sup> Refer NTPF Recruitment Interview notes; p.26- Question 44B – Folder 11 Folio 19

Rolfe did disclose during his interview the “public nuisance” incident that occurred in Townsville; however, it was not disclosed on his original written application. Again, the reasons for this are unknown.

On 22 April 2016, Rolfe received an offer of employment as a Constable in the NTPF to commence training with Squad 129 / 2016 on 30 May 2016.

### NTPF Recruit Training – Constable Zachary Rolfe

On 30 May 2016, Rolfe commenced training with Squad 129. The squad comprised of 30 recruits with the primary instructors being Sgt Michael Hansen (resigned), Sgt Megan Blackwell and Sgt Mathew Marshall (resigned).

During recruit training, Rolfe and his squad members received instruction pertaining to NT legislation, NT Police policy and procedures and three skills blocks covering police driving, firearms, and defensive tactics.

Use of force by NT Police officers is guided by the *General Order, Operational Safety and Use of Force*. All police recruits receive training in relation to use of force with the guiding principles being that members should only use force that is reasonable, necessary, proportionate, and appropriate to the circumstances<sup>24</sup>.

This philosophy on use of force is reinforced in *Police Practice and Procedures (PPP)*, which states that the emphasis will always be on the avoidance of conflict where possible, and informs members that prior to attendance at incidents, officers should thoroughly analyse all available information and evaluate the full potential of the situation in order to avoid potential confrontation.<sup>25</sup>

Of relevance for squad 129 is exam 1, conducted on 20 June 2016, which covered defensive tactics theory. Rolfe scored 27 out of a possible 27 marks for this component. Specifically, Rolfe demonstrated his knowledge of the “use of force” and “minimum use of force”. He demonstrated his understanding of the Northern Territory Police use of force policy and the skills and attributes to avoid physical confrontation.<sup>26</sup>

Rolfe’s recruitment training records reflect he was taught legislation pertaining to circumstances in which force is justified (s27, s28, s29, s208E and 43BD of the Criminal Code Act). The timetable lists S/SGT Meghan BLACKWELL as the instructor teaching the legislation between the dates of 18 July 2016 and 22 July 2016. This legislation is found in the Facilitator Guide / Participant Guide - Introduction to the Criminal Code - Session 2 - Criminal Responsibility<sup>27</sup>.

The facilitator guide contains no training or interactive lesson in relation to section 208E, only a paragraph outlining the legislation. Exam 4 which covers defensive conduct has a single question for section 27, 28 and 29 but no questions in relation to 208E.

<sup>24</sup> Refer NTPF General Order Operational Safety and Use of Force – Folder 11 Folio 21

<sup>25</sup> Refer NTPF Police Practice and Procedures (PPP) – Operational Safety – Folder 12 Folio 22

<sup>26</sup> Refer Exam 1, ROLFE, NTPF College, Squad 129 – Folder 12 Folio 23

<sup>27</sup> Squad 129 timetable and facilitators guide (Criminal Code) – Folder 12 Folio 24

Exam 6, conducted on 14 November 2016, dealt with police response to Incident management. Rolfe scored an overall mark of 28 out of the possible 29. Rolfe demonstrates his knowledge of incident management and risk assessments.<sup>28</sup>

On 10 November 2016, Rolfe undertook scenario skill technique training. This scenario training was conducted in conjunction with Constable Madeline Lanigan (Lanigan) and was based around the response to an aggressive male with a knife.

The subsequent Police Real time Online Management Information System (PROMIS) case note entries and use of force reports completed by Rolfe and Lanigan show that they responded to the male and when he presented an edged weapon both Constables drew their firearms. Both Constables created distance and gave direction for the male to drop the weapon. Constable Lanigan de-escalated to a Taser, and once the male dropped the knife, Rolfe de-escalated to ASR. Both constables effected a hands-on arrest.<sup>29</sup>

Rolfe's overall academic results averaged 96.9%.<sup>30</sup> He is described by his instructors as:

*"...an exemplary student while at the college. I don't recall him having any issues with any of the training or assessments while he was at the college. He is what I would describe as the perfect student as I didn't have to speak to him about any performance issues"*<sup>31</sup>

and;

*"...he was highly intelligent which was reflected in his high-test exam results"*<sup>32</sup>

Rolfe and his squad members also undertook a 10-day skills block in relation to firearm training. Rolfe's running sheet on his performance during this skills block was not completed. Rolfe was awarded the 'dux' of the course for having the highest overall academic results.

On 7 December 2016, Rolfe graduated from recruit training and was posted to Alice Springs police station as a general duties officer.

## Career Overview – Constable Zachary Rolfe

On 14 December 2016, Rolfe commenced duties at Alice Springs Police Station and remained in that position until he was suspended from duty on 13 November 2019.

Between December 2016 and May 2017, Rolfe moved between Patrol Group 1, Patrol Group 2 and Patrol Group 3 within the Alice Springs Police Station. As a result, several different Sergeants supervised him.

Acting Senior Sergeant Allister Gall (Gall) supervised Rolfe for much of this period, and observed the following in relation to Rolfe's performance:

*"Very competent"*

*"I have a high opinion of Rolfe...Good Communicator, very keen to seek out arrest targets".*

<sup>28</sup> Refer Exam 6, Rolfe NTPF College, Squad 129 – Folder 12 Folio 25

<sup>29</sup> Refer Scenario Skill Technique Assessment – Folder 12 Folio 26

<sup>30</sup> Refer Squad 129 exam results – Folder 12 Folio 27

<sup>31</sup> Refer Statement, Former S/Sgt Mathew Marshall, p. 2- Folder 12 Folio 28

<sup>32</sup> Refer Statement, S/SSgt Megan Blackwell, p.2 – Folder 12 Folio 29

*"I know he has had a number of complaints of late, last couple of years, for excessive use of force"*

When asked if the complaints effected how Rolfe was utilised Gall states:

*No. Because I have faith in Zachary's work ethic and how he operates, and he gets the job done"*<sup>33</sup>

In February 2017 Rolfe submitted an Expression of Interest (EOI) to undergo training as part of the Immediate Response Team (IRT).<sup>34</sup>

The IRT was a part time capability comprised of volunteer officers who were provided with skills enhancement training above that of a front-line general duties officer to enable them to support general duties police or respond to high-risk incidents in certain circumstances.<sup>35</sup>

Between 8 May 2017 and 19 May 2017, Rolfe attended and passed the initial training course for the IRT. Members of the Territory Response Group (TRG) ran the course in Alice Springs. At the time, the course was called the Alice Springs Cordon and Containment Team (ASPCCT). The focus of the course was rural cordon and containment with the introduction of basic close quarter tactics (CQT) being room entry and hostage rescue.

On 26 October 2017, Rolfe made application to the ADF for application for service in Special Operations Command (SOCMED). On 15 March 2018, Rolfe as an active reservist in the Army, completed the Australian Army Special Forces entry test. This test is a physical barrier test for further selection in the Australian Army Special Forces.<sup>36</sup>

In his application to serve in special operations command, it is clear Rolfe's career goal, at the time, remained to be serving in the military with Special Forces as stated in his SOCMED application:

*"I have enjoyed and still enjoy my time as a police officer but more than ever my desire is to join the SASR"*<sup>37</sup>

Between 26 July and 3 August 2018, Rolfe undertook TRG selection training. This selection training is a physical barrier test conducted over two days, followed by a five-day firearms skills block, to identify if candidates possess the fitness, capacity, and suitability to apply for a permanent role within TRG.

Rolfe scored above the required standard and was recommended to apply for future vacancies within TRG. After the selection training, Rolfe returned to Alice Springs and continued in general duties policing.<sup>38</sup>

On 15 October 2018, Rolfe completed all requirements of his Probation Constable Workplace Practicum's and was awarded a Diploma of Policing. He was confirmed as a Constable in Gazette 18 on 06 September 2018.<sup>39</sup>

<sup>33</sup> Refer Statement A/S/Sgt Gall – Folder 12 Folio 32

<sup>34</sup> Refer EOI for IRT Training – Folder 12 Folio 33

<sup>35</sup> Refer IRT Standard Operating Procedures including approval memorandums – Folder 12 Folio 34

<sup>36</sup> Refer extract of Australian Army Employment File – Folder 13 Folio 38

<sup>37</sup> Refer Application to serve in Special Operations Command – Folder 11 Folio 2

<sup>38</sup> Refer TRG Course reports – Folder 13 Folio 36

<sup>39</sup> Refer NTPF Gazette 18, 6 September 2018 – Folder 13 Folio 40

On 16 October 2018, Rolfe received the Australian Bravery Medal from the administrator of the NT for his act of gallantry during rescue operations of two persons whose vehicle had been washed off a roadway at the Hugh River crossing on Larapinta Drive in Alice Springs on 27 December 2016.<sup>40</sup>

Between 12 May 2019 and 15 June 2019, Rolfe enrolled to undertake further training with South African based company RONIN Securities. RONIN provide a 4-week close protection officer course that encompasses a high level of medical trauma training. Rolfe paid \$5,150 to attend the course, however completed only one week before leaving. RONIN CEO Timm Irvine-Smith stated that Rolfe forfeited the course payment in accordance with their terms and conditions.<sup>41</sup>

On his return from the Ronin course back to Alice Springs, Rolfe recommenced back at work in general duties, working on patrol group 5.

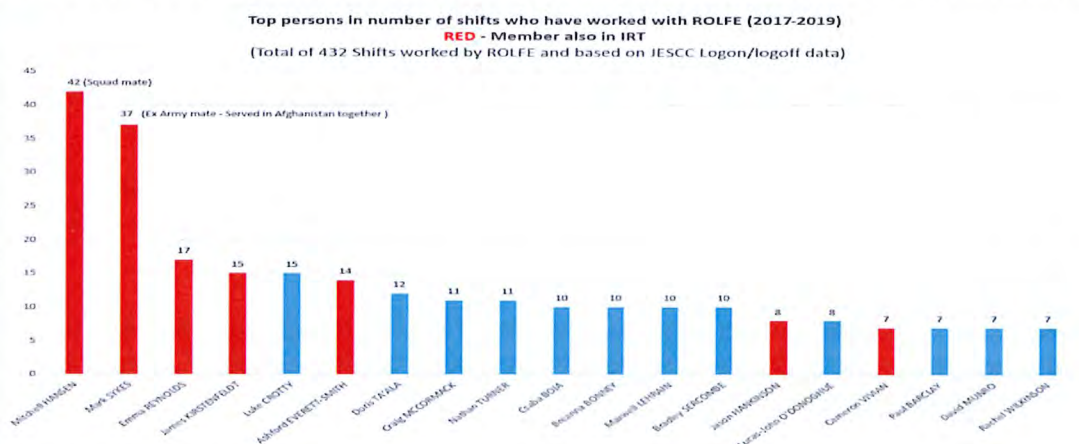
### Promis Cases

A review of the PROMIS system shows that Rolfe has had involvement in 3176 Promis cases since his commencement with NTPF. Further analysis shows that Rolfe was the case officer for 1519 of the 3176 Promis cases.

### Patrol Partners

A review of information Log on and Log Off<sup>42</sup> data obtained from the Joint Emergency Services Communications Centre (JESCC) shows that between December 2017 and November 2019, Rolfe worked a total of 432 shifts during this period<sup>43</sup>.

An analysis of this data (represented in the chart below) shows that for 256 of the 432 shifts Rolfe worked with 19 police partners for 7 shifts or more. The officers who Rolfe worked with the most were Constable Mitchell Hansen (a squad mate of Rolfe) who worked 42 shifts with Rolfe and Constable Mark Sykes (An ex- ADF Soldier who served in Afghanistan with Rolfe) who worked 37 shifts with Rolfe. Both Hansen and Sykes were also members of the IRT.



<sup>40</sup> Refer Bravery nomination and related article – Folder 13 Folio 41

<sup>41</sup> Refer Email : CEO Ronin SA, Timm Irvine-Smith to D/Sgt Darren Burns – Folder 3 Folio 46

<sup>42</sup> Log on / Log Off data refers to a member logging on for duty or off duty using the PFES radio network. Refer Folder 72 Folio 57

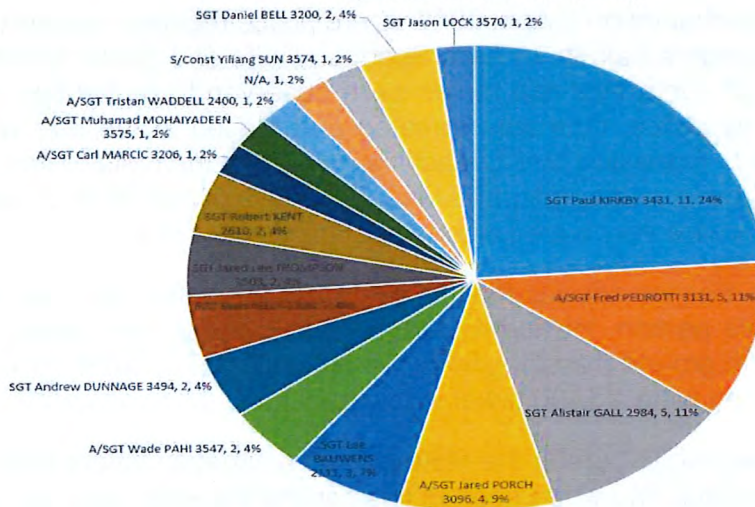
<sup>43</sup> Refer document Rolfe UOF and other graphs- Authored by D/S/C Kingston – Folder 71 Folio 47

### Shift Supervisors

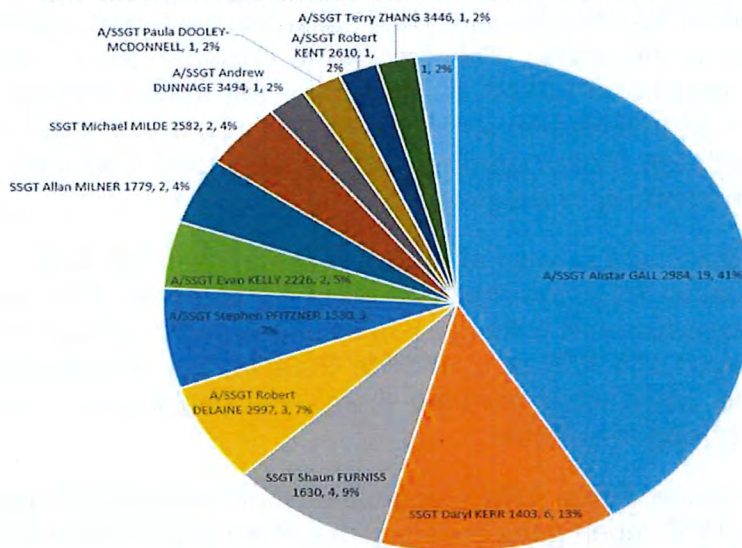
A review of rosters and UOF force notifications shows that for the period December 2016 to November 2019, Rolfe had 17 different supervisors at the rank of Sergeant or Acting Sergeant<sup>44</sup>. For the same period Rolfe had 13 supervisors at the rank of Senior Sergeant or Acting Senior Sergeant<sup>45</sup>.

The charts below give a visual representation of Rolfe's supervisors at Sergeant and Senior Sergeant level at times when he had involvement in a UOF notification.

**WHO WAS ROLFE'S SGT AT THE TIME HE WAS NAMED IN A UOF (USING ROSTER AND UOF DATA)**



**WHO WAS ROLFE'S SSGT WHEN HE WAS NAMED IN A UOF (USING ROSTER AND UOF DATA)**



<sup>44</sup> Refer document Rolfe UOF and other graphs – Authored by DSC T. Kingston – Folder 71 Folio 47

<sup>45</sup> Refer document Rolfe UOF and other graphs – Authored by DSC T. Kingston – Folder 71 Folio 47

### *Use of Force (UOF) History Constable Zachary Rolfe*

A review of the UOF history of Rolfe for the period 16/12/16 to 09/11/19 indicates that Rolfe has involvements in 46 incidents where UOF Case Note Entries (UOF CNE) have been submitted<sup>46</sup>.

A review of the UOF incidents involving Rolfe was also undertaken by Senior Sergeant Andrew Barram. In his statement Barram advises that in the majority of the UOF incidents that Rolfe was involved in, which mostly also involved other officers, the force used was reasonable, necessary, proportionate, and appropriate<sup>47</sup>. However, 5 incidents were identified where, in Barram's opinion, the force used was not reasonable, necessary, proportionate, and appropriate. The five incidents identified were:

#### Promis 8111295

This incident relates to a disturbance on 2 April 2017 where police received a report of a fight in the street outside of the Bojangles Saloon, in Alice Springs. Rolfe and Senior Constable Craig McCormack attended the call. On arrival two males were observed to be fighting and ceased fighting when approached by police. One was arrested and placed in the rear of the police vehicle, the second ran away. Rolfe and McCormack then pursued the male on foot, caught up to him, tackled him to the ground and handcuffed him. The males were then conveyed to the Alice Springs Watch-house where they were issued and infringement notice.

In the review of this incident, Barram advises that in his opinion the better response would have been not to pursue the male person. He further states that to pursue the person for several hundred metres, tackle him to ground (resulting in minor injuries to him), arrest him and convey him to the watch-house to then write a \$400 ticket is overzealous.

Barram observes that in choosing to pursue the male person a situation where force was used when it could have been avoided, and when seen in this context the force was not reasonable, necessary, proportionate, or appropriate.

#### Promis 8391540

Relates to a domestic disturbance that occurred on 11 January 2018 at a residence in Alice Springs where the male partner (Bentley Poulson) had assaulted the female partner (S██████ W██████), who was the victim in this matter. Police spoke to W██████ at the neighbour's house, where she had gone to get away from Poulson, the offender in this matter. Poulson had left prior to police arrival. However, a short time later a male believed to be the offender was observed sneaking back into the residence. Police entered the residence and a struggle ensued with Poulson as he was taken into custody in a bedroom.

As a result of the screams the Poulson was making while being taken into custody, his mother (Rebecca Hayes) and stepfather (Malcolm Ryder) entered the bedroom. BWV shows that the Ryder swung his right arm at police while holding a mobile phone and that Hayes made a similar action. They were both sprayed with ASR by Constable Geranios and retreated from the room back up the hallway. Rolfe immediately pursued them, knocking Hayes to the floor, and continuing up the hallway chasing after Ryder.

The PROMIS case and the Use of Force (UOF) report state that the stepfather was "tackled and ground stabilised". The UOF report goes on to say that Rolfe struck Ryder once to gain subject control.

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<sup>46</sup> Refer UOF Report – Rolfe – Authored by Det Emma Carter and Det Greg Kean – Folder 71 Folio 41

<sup>47</sup> Refer Statement S/Sgt Barram – 26 March 2020 – Folder 35 Folio 7

As a result of this interaction with Rolfe, Ryder received two lacerations to his forehead and needed to be transported by ambulance to Alice Springs Hospital. Once at hospital, the laceration above his right eyebrow required 13 sutures to close it, and a laceration on the left side of his forehead required 3 sutures to close.

In his review and statement, Barram finds the level of force used by Rolfe to be not reasonable, not necessary, and to be such that it falls into the realm of excessive force.<sup>48</sup> The circumstances of this incident are also detailed below in CAP2018-186 and IntInv2019-044.

#### Promis 8886461

Relates to a general disturbance at Araluen Park, Alice Springs, which occurred at around 6.55pm on 18 February 2019. Rolfe's BWV shows that on police arrival, two heavily intoxicated men were having an altercation. Due to their heavy intoxication, they were staggering and the punches they were throwing were without any strength or coordination and were ineffective as far as causing any injury.

As Rolfe approached, one of the males turned and staggered drunkenly away from the altercation Rolfe moved in and pushed this man hard, causing him to fall over heavily onto the ground. The second man took a step towards Rolfe, and Rolfe also pushed him hard, causing him to fall heavily to the ground.

In his assessment, Barram finds that this was an excessive use of force, being use of any force where none is needed, and no regard appears to have been given by Rolfe as to the potential for injury that could have been caused.

No attempt was made to lower them to the ground in a controlled manner and that the force used was not reasonable, necessary, proportionate, or appropriate<sup>49</sup>.

The circumstances and details of this incident are also detailed below in Intinv 2020-033

#### Promis 9087054

Relates to a foot-chase through the Alice Springs Mail that occurred on 24 September 2019. Constables Rolfe and Kirstenfeldt located a man outside the Todd Tavern and began questioning him in relation to an escape custody. The man was evasive in his answers to questions and then ran away from police.

Rolfe had his BWV activated and gave chase. The chase went from outside the Todd Tavern on Wills Terrace to outside Sporties restaurant, a distance of approximately 250 metres. The man appears to slow down considerably outside of Sporties restaurant. Rolfe did not slow down and ran full force into the man, striking him with outstretched hands. This caused the man the crash with considerable force into a fence outside Sporties.

In his assessment, Barram states that this was an unnecessary application of force. The man was giving up, having run out of breath. No force was necessary to apprehend him. The force used was not reasonable, necessary, proportionate, or appropriate. The man could have been verbally directed to lie down and then had handcuffs applied<sup>50</sup>.

<sup>48</sup> Refer Statement S/Sgt Andrew Barram 26/3/2020 – Folder 35 Folio 7

<sup>49</sup> Refer Statement S/Sgt Andrew Barram 26/3/2020 – Folder 35 Folio 7

<sup>50</sup> Refer Statement Senior Sergeant Andrew Barram 26/3/2020 – Folder 35 Folio 7

## Promis 9103041

Relates to an incident that occurred at the Alice Springs Town Council building at around 2.30am on 12 October 2019. A man and woman were having an argument. Rolfe states in the Use of Force form that the man was standing in the woman's face with clenched fists and showing pre-attack indicators. Rolfe ran across the Council lawns and pushed the man at full speed into the wall of the Council building without any warning. As a result of this push from behind, the man fell heavily into a bench seat attached to the wall of the Council building, striking his head on the seat. This caused his forehead to be split open in a large laceration that required medical attention at Alice Springs Hospital, needing nine sutures to close the wound.

In his assessment of this incident, Barram advises that this application of force by Rolfe was excessive, resulting in quite a significant injury. This response was not reasonable, necessary, proportionate, and appropriate to the situation<sup>51</sup>. This incident is also detailed below as part of IntInv2020-001

## Synopsis of Review

In his review of the historical UOF incidents, Barram makes the following observations in relation to Rolfe's use of force<sup>52</sup>:

*Having reviewed historical use of force incidents in which Constable Zachary Rolfe has been involved, I do not believe he endeavours to bring about a peaceful resolution to some incidents, and instead uses quite heavy-handed tactics. I have identified five (5) incidents in which, in my opinion, the force used by Rolfe was excessive, and inconsistent with the use of force philosophy and the 10 Operational Safety Principals. In these five incidents, Rolfe chose to use a tactical option that was not reasonable, necessary, proportionate, and appropriate to the circumstances. Rolfe's choice of tactical option in these cases has resulted in injuries to subjects and the potential for injury to himself, which could easily have been avoided.*

*Rolfe consistently fails to use effective communication as a tactical option to defuse a situation, and appears to prefer to go hands-on, which is not in line with the Force Philosophy. This precludes any opportunity for uncooperative subjects to modify their behaviour and become more cooperative. The result is that, in the matters reviewed, force is used where none is needed. It is my view that Rolfe interprets any non-compliance or lack of cooperation as a threat, and he therefore responds with a higher-level use of force than would reasonably be considered necessary in the circumstances.*

*In my opinion, Rolfe also demonstrates a tendency to want to "get his man" no matter what and pays little or no regard to the consequences of his actions, which has resulted in quite severe and totally unnecessary injuries to subjects in some cases. In disregarding the consequences of his actions, he also disregards his training and the use of force policy. Rolfe's decisions and actions precipitate confrontations where he then uses force. The force would not have been necessary but for ROLFE'S decisions and actions in precipitating the confrontation.*

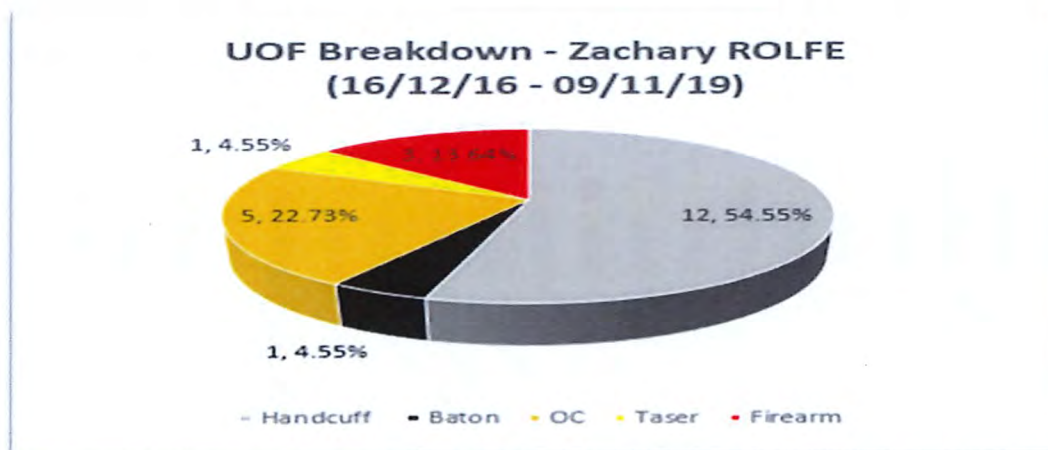
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<sup>51</sup> Refer Statement Senior Sergeant Andrew Barram 26/3/2020 – Folder 35 Folio 7

<sup>52</sup> Refer Statement Senior Sergeant Andrew Barram 26/3/2020 – Folder 35 Folio 7

### UOF History – Constable Zachary Rolfe: Use of Accoutrements

Analysis of the 46 UOF force incidents in which Rolfe had involvements, shows that on 22 occasions Rolfe utilised a Use of Force Option, i.e. Handcuffs, Baton, OC Spray or Firearm<sup>53</sup>. The chart below provides a visual representation and breakdown of the number of times these options were used by Rolfe.



Using this data and the same methodology breakdowns of incidents where UOF options were used, a comparison of accoutrements used in UOF incidents over the period 16/12/16 to 09/11/19 by Rolfe against other groups of users (such as IRT, Alice, Darwin, Ex Defence and Non-Defence) was also undertaken<sup>54</sup>.

This analysis highlights that Rolfe’s reported usage of firearm is almost 5% more than the organisational average<sup>55</sup>, his use of OC Spray is 11% higher than the organisational average and his use of Taser is 11% (more than two third’s less) than the organisational average.

This analysis is visually represented in the following table:

Group / Number of Incidents	Handcuff Usage	Baton Usage / Presentation	OC Usage / Presentation	Taser Usage / Presentation	Firearm Usage / Presentation
ROLFE (22)	54.55%	4.55%	22.73%	4.55%	13.64%
Organisational Average (6093)	62.76%	1.67%	11.05%	15.59%	8.93%
Non-Defence (2582)	68.44%	1.90%	10.46%	12.94%	6.27%
Ex Defence (1037)	59.11%	1.25%	13.69%	15.53%	10.41%
Members of IRT (192)	67.71%	2.60%	11.98%	9.38%	8.33%
Squad 129 (252)	68.65%	0.79%	11.11%	13.49%	5.95%
45 Member Alice GD’s sample (316)	66.77%	1.90%	12.97%	13.29%	5.06%
45 member Darwin Region GD’s sample (647)	68.01%	0.62%	9.58%	17.16%	4.64%

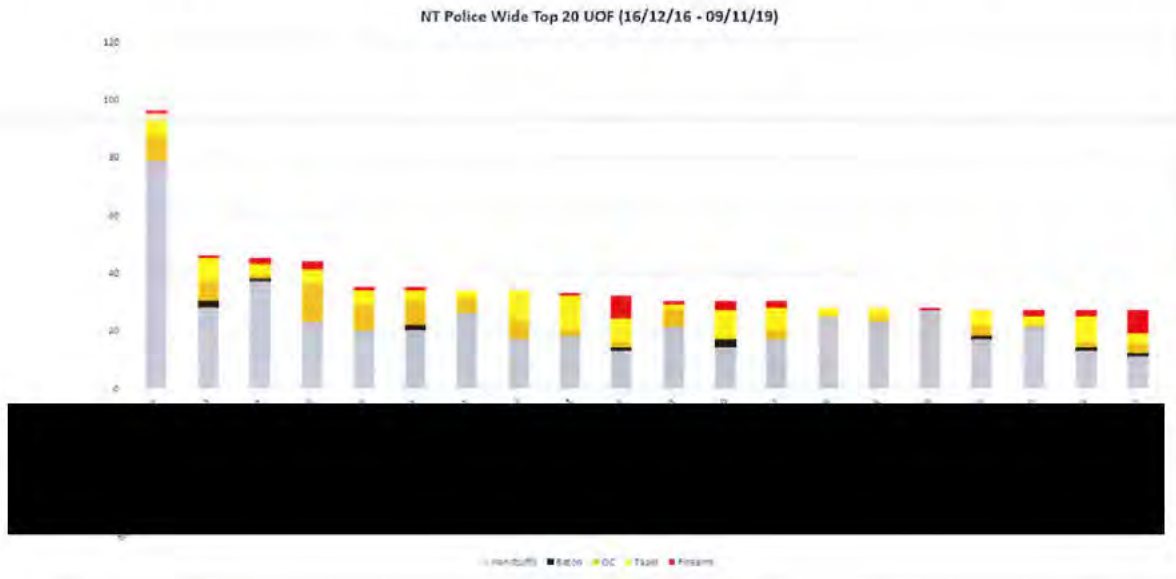
Analysis of UOF data and involvements NT Police wide for the period 16/12/16 to 09/11/19 was also

<sup>53</sup> NOTE – UOF reporting in Promis does not count the use of physical / hand to hand tactics as a UOF Option

<sup>54</sup> Refer UOF and other Graphs Document – Authored by DSC T. Kingston – Folder 71 Folio 47

<sup>55</sup> NOTE – Firearm Usage reporting includes use or draw a firearm. The data recorded here only refers to presentation as a UOF Form was not submitted in relation to the shooting of Kumunjayi Walker.

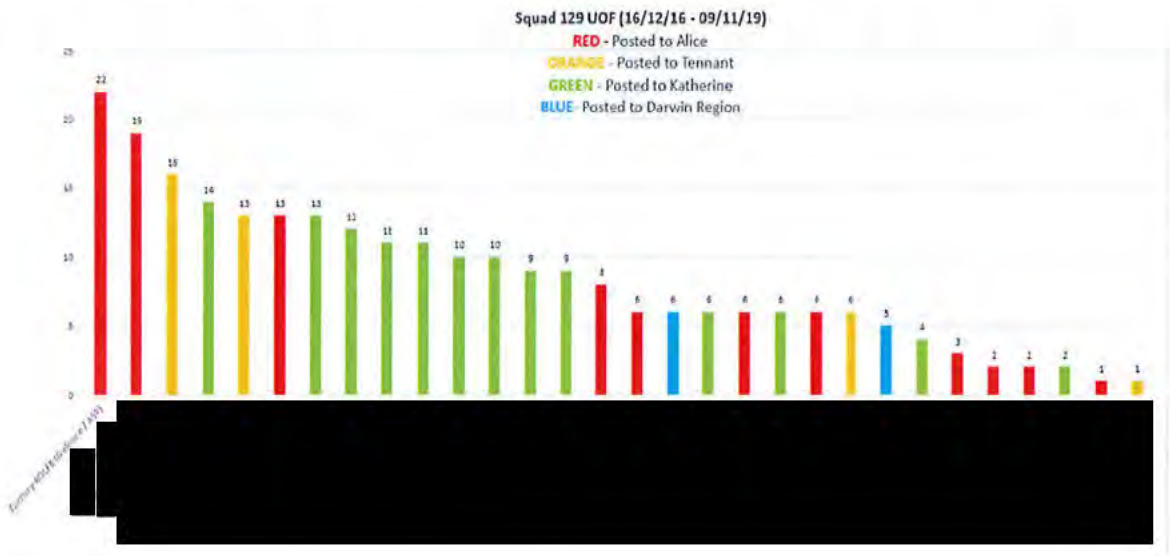
undertaken to identify the “top 20” officers with UOF involvements<sup>56</sup>. The top 20 officers are represented in the chart below, Rolfe is not recorded in the top 20 officers.



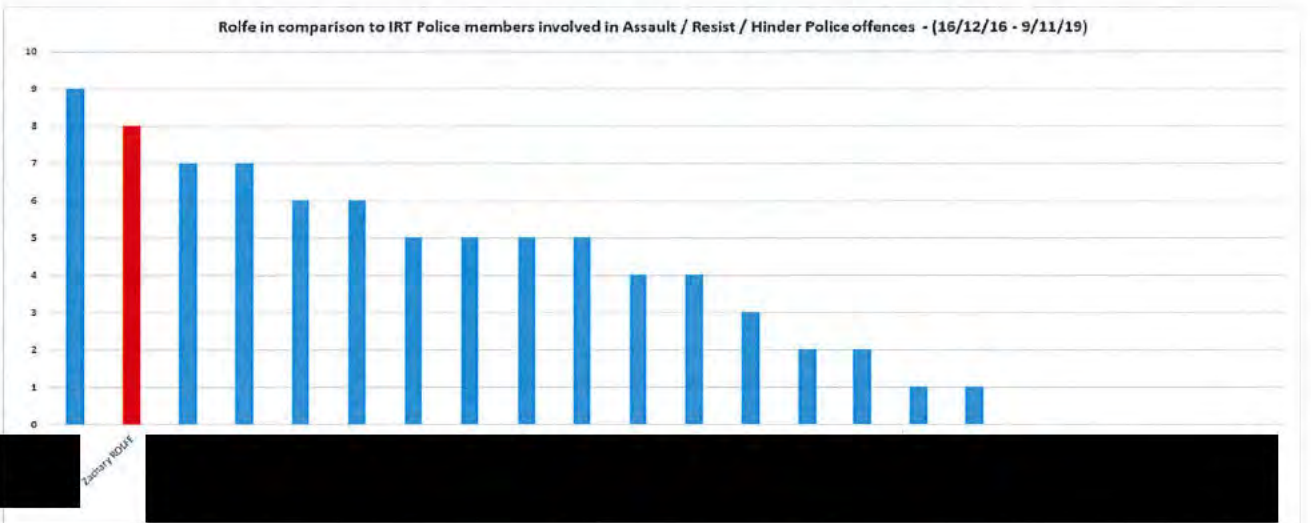
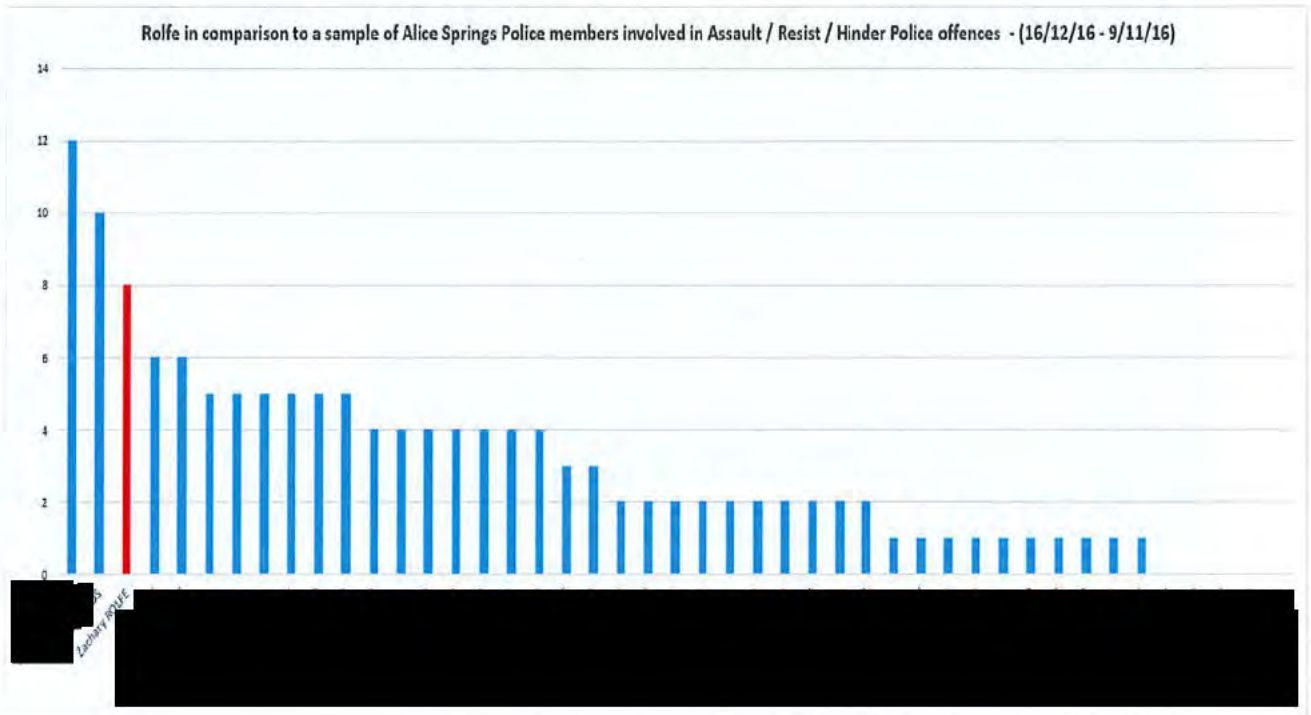
**Arrests and Charges**

As part of this career overview, an analysis was undertaken of Rolfe's involvement in Promis cases relating to Assault, Resist and Hinder Police offences. The analysis shows that for the period 16 December 2016 to 9 November 2019, Rolfe was involved in 8 Promis cases.

The analysis was then expanded to incorporate other user groups, including a random sample of officers in Alice Springs Police Station, members of the Alice Springs IRT, and officers from recruit squad 129 (Rolfe's recruit squad) which are detailed in the charts below.



<sup>56</sup> NOTE - This data is purely representative of the number of UOF involvements, the inclusion of officers in this top 20 it does not indicate that the UOF by the officer is excessive or inappropriate.



Analysis of all three charts shows that Rolfe is in the higher levels of officers who are involved in assault, resist, and hinder police offences in comparison to the other officers contained in the random sample with involvement in 8 incidents.

**IRT Involvements**

Since completing his IRT training in May 2017, according to IRT records, Rolfe has had a total of nine (9) IRT deployments. Four of these occurred in 2018 and five of these occurred in 2019. Details of the deployments are contained in the tables below.

2017	8-20 May 2017	ROLFE Completes ASPCCT (IRT) training	Course report / Alice roster
2018	19-Aug-18	Arrest Target Docker River - A special operation was created to apprehend two arrest targets - COOPER and MITCHELL). ROLFE was working with SGT Lee BAUWENS, and Constables Luke BEVAN and Ashford EVERTT-SMITH. They were deployed in camouflage uniform, whilst at an outstation near Docker river, COOPER was sighted and took flight after seeing Police. ROLFE gave chase. During the chase, COOPER turned and faced ROLFE and attempted to strike him, then continued running. The incident was resolved when COOPER stopped a second time and after an unsuccessful deployment of the Taser, COOPER was taken to the ground and arrested. COOPER was later charged and convicted of RESIST.	P8698101 and P8656194 /Police Statement ROLFE / UOF
	12-16 Nov 2018	Ali Curung Unrest - Westside vs Eastside clan fighting. During the disturbance, one male took flight and hid in the bush. He was later discovered and appeared unwell later dying of a heart related condition. Further trouble experienced in the community as a result. Additional resources deployed to maintain calm including IRT / Major Crime / Tenant Creek. IRT deployed with 6 members and dog handler. Task was crime scene guard, visible patrols, line search and maintaining order	P8788696 / P8788868 / Police Statement Luke BEVAN
	28-Nov-18	Community unrest in Hermannsburg as a result of an 11yo girl being stabbed multiple times. Additional crime scene guards were deployed from Alice Springs along with Police members ZHANG / ROLFE / REYNOLDS to maintain order	P8804925 / Police Statement JP ANTEMES
	27-28 Dec 2018	Arrest Target Borroloola - Escaped prisoner NOBLE from the station. 4 x IRT members flown in from Alice (BEVAN / ROLFE / HANSEN / HAWKINS) to assist in the search. NOBLE arrested 0430 on the 28/12/18	P8833429
2019	27-Feb-19	Two vehicles and a firearm with ammunition were stolen from a property in Araluen. IRT members BAUWENS / ROLFE / HANSEN / EVERRET-SMITH called to locate SMV and recover firearm. Vehicles were initially used which located one of the stolen vehicles, a pursuit was called but it was later called off. A helicopter was used to try and locate the vehicles. ROLFE deploys with AR-15 in the Helicopter. Search later called off after vehicles not being located.	P8894190 / P9038172
	9-10 Mar 2019	Community unrest in Borroloola, two IRT members called to supplement TRG members to maintain peace in the community. Members ROLFE and BAUWENS attended in camouflage uniform with full kit.	P8854742 IRT Station Journal CNE 10
	5-Jun-19	IRT placed on standby for deployment to Papunya Community in response to a firearms incident. Mbrs BAUWENS / TAITE / ROLFE in full kit on standby at Airwing. Later stood down no longer required.	P8854742 IRT Station Journal CNE 16
	09-Jul-19	IRT Members ROLFE / SYKES called to assist general duties members arrest offender Colin WILLIAMS. Upon arrival at a camp near Barrow Creek, WILLIAMS was observed running away. ROLFE gave chase resulting in WILLIAMS being arrested.	P8854742 IRT Station Journal CNE 18 / P9020044 / P9018451
	9-Nov-19	IRT Members ROLFE / HAWKINGS / EBERL / KIRSTENFELDT called out in general support to Yuendumu and to arrest WALKER	P8854742 IRT Station Journal CNE 22

The majority of the tasking's relate to the provision of support to other policing operations, for example, six of the deployments from the details provided relate to events described as community unrest or general support. The remaining three events from the details provided relate to the arrest of a specific target.

### *Complaints against Police, Disciplinary Matters and Respect, Equity & Diversity Complaints and Compliance with General Orders*

A review of Complaints against Police, Disciplinary Matters and Respect, Equity and Diversity complaints from his commencement of service in Alice Springs on 14 December 2016 until his suspension from duty on 13 November 2019, shows that there is no history of Respect, Equity and Diversity complaints where Rolfe is the subject officer or complainant.

In relation to his compliance with General Orders, the review found little in the way of records, information from Promis cases or supervisor comments on Rolfe's MYCareer<sup>57</sup> profile to indicate that Rolfe was an officer who was non-compliant with General Orders.

However, the review of Rolfe's UOF shows several occasions where his UOF was considered to be inappropriate after review by Senior Sergeant Andrew Barram. A further review of Rolfe's UOF shows that on 13 occasions Rolfe failed to activate his BWV, thereby failing to comply with instructions. On 6 of the 13 occasions, he was provided remedial advice by a supervisor, watch-commander, or divisional superintendent.

The review also shows that Rolfe has involvement in 12 matters that were referred to the Professional Standards Command (PSC) as complaints against police or internal investigations<sup>58</sup>, and a one-off duty incident that was subject to investigation by the Southern Serious Crime Squad. A summary of those matters, their current status and outcomes are detailed below.

#### *PROMIS 8263433*

This matter relates to an incident that occurred in Alice Springs on 17 September 2017. Rolfe, in company with fellow police officers Mitchell Hansen, Wesley Thomson and Bradley Lynch were walking home from Bojangles and the Rock Bar.

Rolfe and Thomson were walking along the pathway on Leichardt Terrace, when Rolfe heard someone running behind him. Rolfe turned around and saw a male person sprinting towards him with his fists clenched, as the male person got closer Rolfe alleges the male swung a punch at him. Rolfe ducked under the punch and then 'spear-tackled' the male person to the ground.

Two other male persons then approached Rolfe and an altercation occurred which saw Rolfe sustain a blow to the jaw which knocked him to the ground. While on the ground Rolfe sustained several kicks and punches to the face and head. Hansen and Thomson came to the assistance of Rolfe and the altercation continued for a short time, before Rolfe, Thomson and Hansen ran through the Todd River to Rolfe's residence in Barret Drive.

Later that day (17 April) Rolfe sought medical attention at the Alice Springs Hospital where it was discovered that he had sustained a fractured jaw and would require surgery at the Royal Darwin Hospital.

The incident was reported to the then Officer in Charge of Alice Springs Police Station, Senior Sergeant Mike Williams, who then referred the matter on to the Southern Investigations Division.

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<sup>57</sup> MYCareer is the system and tool used by NTPFES to record employee career and performance development conversations. Refer Folder 71 Folio 50

<sup>58</sup> Refer PSC Career Profile – Zachary Rolfe "March 2021 – Folder 71 Folio 43

The investigation identified the 3 male persons who were subsequently interviewed by police. Their account was that one of the males was hyped up and doing stupid stuff, and when he saw the two guys walking (Rolfe and Thomson) he sprinted at them, and one of the guys just grabbed him and slammed him to the ground.

The investigation determined that the actions of the other two males were in response to Rolfe grabbing and spear-tackling their friend. Rolfe and Thomson withdrew their initial complaints of assault, and the matter was finalised without any further action being taken<sup>59</sup>.

#### *CAP2017-272*

This complaint occurred on the 28 of August 2017 and relates to allegations of rudeness and improper conduct by Rolfe while off duty. The alleged improper conduct related to the use of inappropriate language.

The matter was investigated by Acting Senior Sergeant Jared Thompson and was resolved through the Complaints Resolution Process (CRP). The outcome of the investigation was that Rolfe was counselled (by Thompson) in relation to the behavioural expectations placed upon members of the police force.<sup>60</sup>

#### *CAP2018-186*

This complaint was made by the North Australian Aboriginal Justice Agency Ltd (NAAJA) on behalf of Mr Malcolm Ryder on 5 June 2018, arising from his interaction with police on 11 January 2018.

The complaint related to allegations of improper conduct by police in the form of excessive force (use of OC Spray), take-down to the ground, strike to the head, pulling of hair and kneeling on back).<sup>61</sup> During the incident Ryder sustained an injury above his right eye, believed to have been caused when he was tackled, which required 10 stitches, he also received a laceration above his left eye which required 3 stitches.<sup>62</sup>

The matter was investigated by Sergeant Dion Roche of the Police Standards Command. The investigation findings were that the use of OC Spray, the take-down to the ground, the strike to the head and the kneeling on the back were all reasonable. The allegation in relation to pulling of hair was unable to be substantiated.

An ancillary matter identified during the investigation was that the officers failed to activate their Body Worn Video (BWV) during the incident. This was addressed through an agency wide broadcast in relation to BWV use disseminated on 2 March 2018 and an additional divisional broadcast issued in Alice Springs by Acting Superintendent Pauline Vicary on 26 March 2018.

There were no specific outcomes relating to the specific individual actions of the four subject officers – Constable 1/C Max Lehrain, Constable Brett Geranios, Constable Zachary Rolfe, and Constable Xhenita Zendeli.

#### *CAP2018-302*

This complaint was made by NAAJA on behalf of Master T ■■■ G ■■■ (G ■■■), a 14-year-old Aboriginal boy of slight build with some cognitive difficulties.

<sup>59</sup> Refer Internal Memo D/Sgt Paul Parkanyi re PROMIS 8263433 – Folder 72 Folio 58

<sup>60</sup> Refer CAP2017-272 – Folder 71 Folio 43

<sup>61</sup> Refer CAP2018-186 – Section 92 report – Folder 71 Folio 43

<sup>62</sup> Refer CAP2018- 186 – Use of Force CNE – Folder 71 Folio 43

The complaint related to allegations of unnecessary force being used by police on 11 August 2018, when G [REDACTED] was apprehended by police. The specifics of the allegation were that following the direction of a police officer, G [REDACTED] placed himself on the ground, the officer continued to run towards G [REDACTED] and when the officer got to G [REDACTED] the officer dropped his knee on the head of G [REDACTED]. The letter of complaint also indicated that BWV appeared to be activated during the incident<sup>63</sup>.

The Office of the Ombudsman (OO) referred the matter to Police Standards Command (PSC) for a preliminary enquiry which was undertaken by Sergeant Lisa Bayliss.

The enquiry revealed that G [REDACTED] had entered into a bail agreement at the Alice Springs Court House on 10 August 2018, conditions of bail issued by the Court included that G [REDACTED] follow the directions of Territory Families and that he reside at 11 Titjikala community. At 2.50 pm on 10 August 2018, G [REDACTED] absconded from Territory Families protection workers.

On 11/08/2018 G [REDACTED] was spotted by police near Anzac Oval, and after an extensive search G [REDACTED] was located hiding in a wheelie bin by Constable Zachary Rolfe. Who then arrested G [REDACTED] for breach of bail.

The whole incident was recorded on BWV by Rolfe. Sgt Bayliss notes that the arresting officer (Rolfe) used the RISC principle (Rapid, Intense, Specific, Competent) to effect the arrest which was sudden and forceful.<sup>64</sup>

On reviewing the preliminary inquiry material and the BWV footage, the OO determined that the allegations could not be supported, and the matter was discontinued pursuant to s67 (1) (e) of the *Ombudsman's Act*.

It was also noted that the capturing of the whole incident on BWV by Rolfe could be used as an example of how, when allegations are made, BWV can close allegations almost straight away<sup>65</sup>.

No recommendations or outcomes were made or taken in relation to the actions of Constable Rolfe.

### CAP2019-116

This complaint was made by NAAJA on behalf of Master C [REDACTED] Wa [REDACTED] (W [REDACTED]) a 17 year old Aboriginal boy.

The complaint related to allegations of unnecessary force being used by police on 1 April 2019, when W [REDACTED] was arrested by police. The specifics of the allegation are that W [REDACTED] was chased by police officers through the Todd River, Wills Terrace and Anzac Hill area of Alice Springs. During the foot chase W [REDACTED] followed a direction of the officer (Constable Zachary Rolfe), stopped running and placed himself on the ground. The officer then during the process of arresting W [REDACTED] banged his head into a rock several times, causing a laceration to W [REDACTED]'s head that required medical treatment and stitches<sup>66</sup>.

The matter was initially assessed by the Office of the Ombudsman (OO) and categorised as being suitable for the Complaints Resolution Process (CRP), however, the CRP failed as W [REDACTED] and his guardian did not agree with the version of events provided by police (that W [REDACTED] fell over as opposed to police banging his head on a rock).

<sup>63</sup> Refer CAP2018-302 – Letter from NAAJA – Folder 71 Folio 43

<sup>64</sup> Refer CAP2018-032 – PI Material – Folder 71 Folio 43

<sup>65</sup> Refer CAP2018-032 – Declined Outcome – Folder 71 Folio 43

<sup>66</sup> Refer CAP2019-116 – Draft Final Report of Superintendent Virginia Read – Folder 71 Folio 43

A review into the case identified that the subject officer (Rolfe) had a similar complaint made against him, where his BWV had not been activated and the person being apprehended incurred a head injury requiring sutures (CAP2018-186 Mr Malcolm Ryder). This raised sufficient concerns for the matter to be re-categorised as a category 2 investigation.

The category 2 investigation addressed three allegations, two relating to improper conduct (excessive force) and one relating to procedural concerns (failure to comply with the BWV instruction). The outcomes of these allegations, detailed in the draft final report of Superintendent Virginia Read, were that the allegation of excessive force relating to banging W [REDACTED]'s head into a rock was unresolved. The allegation of excessive force relating to Rolfe placing his hands under W [REDACTED]'s chin was not sustained and the actions were not found to be unreasonable in the circumstances. The allegation of procedural concerns relating to the use of BWV were sustained<sup>67</sup>.

A number of ancillary issues were also identified, ancillary issue 1 related to information provided in the statutory declaration of Rolfe, which was incorrect and contradictory to the evidence of the body worn video footage captured by one of the other officers. The report states that there appears to be elements of dishonesty in the statement of Rolfe.

In relation recommendations, outcomes and actions taken in relation to the actions of Constable Rolfe. In the final report it is noted that due to the matter initially being categorised as a CRP and then being re-categorised as a category 2 matter, the statute of limitations under the Police Administration Act had expired nullifying the capacity for disciplinary action to be taken.

It is also noted that prior to the completion of the Category 2 investigation, Rolfe was arrested and charged for offences in relation to the death of Kumanjayi Walker. Issues identified since the completion of the CRP process and finalisation of the Category 2 investigation have not been put to Rolfe.

### *CAP2019-342*

This complaint was made by NAAJA on behalf of Mr Luke Madrill (Madrill) an 18-year-old Aboriginal Male.

The complaint related to allegations of unnecessary force being used by police on 20 April 2019, when Madrill was arrested by police. The specifics of the allegation are that on 20 April 2019, Madrill was asleep at his mother's house in Charles Creek, Alice Springs and while he was sleeping two police officers attended the residence. Madrill exited the residence and ran in to bushland behind Charles Creek and was pursued on foot by the police officers.

After running for a few minutes, Madrill stopped and put his hands on his back, stating words to the effect of "I'm stopped, you can arrest me now". One of the officers (alleged to be Rolfe) took hold, picked him up, and 'slung' him down the hill, causing him to roll 3 or 4 times and collide with a large rock.

Madrill screamed out in pain, and in response one of the officers stated, "*that's good you got flipped, you think you're good*", then both officers started laughing.

This complaint was investigated by the Professional Standards Command (PSC). Prior to the completion of the Category 2 investigation, Rolfe was arrested and charged for offences in relation to the death of Kumanjayi Walker. As a result of this, issues identified during the Category 2 investigation have not been put to Rolfe.

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<sup>67</sup> Refer CAP 2019-116- Draft Final Report of Superintendent Virginia Read – Folder 71 Folio 43

The category 2 investigation addressed two allegations, one relating to improper conduct (excessive force) and one relating to improper conduct (rudeness and sensitivity). The outcomes of these allegations, detailed in the draft report of Acting Senior Sergeant Richard Magree<sup>68</sup>, were that the allegation of excessive force relating to Madrill being picked up and 'slung down the hill' and the allegation of rudeness and improper conduct relating to officers laughing at Madrill were both unresolved and no recommendations were made.

An ancillary issue of all four officers, and in particular Rolfe not operating his BWV, was also identified. This allegation was sustained.

It is noted that prior to the completion of the Category 2 investigation, Rolfe was arrested and charged for offences in relation to the death of Kumanjayi Walker. Issues identified during the Category 2 investigation have not been put to Rolfe.

It is also noted that a three-year extension in relation to potential disciplinary action under Part IV of the Police Administration Act 1978, was granted by Chief Judge Elizabeth Morris on 8 April 2020. Thus, placing this investigation and any actions in abeyance until such time as any criminal proceedings involving Rolfe are completed.

### **CAP2020-027**

This complaint was made by NAAJA on behalf of Mr Antonio Woods (Woods) a 20-year-old Aboriginal male.

The complaint related to allegations of the unlawful use of force by a member of the Northern Territory Police Force and a breach of the Police Force's general orders and instructions relating to arrests, operational safety and use of force, and the Code of Conduct and Ethics.

The specific allegations are that on or around 28 June 2019, Woods was at Warlpiri Camp in Alice Springs. While Woods was at Warlpiri Camp the police attended in response to a fight. When Woods saw the police, he proceeded to run toward the truck stop on the Stuart Highway.

Woods was pursued on foot by police, and while being pursued tripped and fell to the ground. Woods alleges that while he was lying face down on the ground a member of the police force kicked the left side of his face and the back right side of his head, approximately six (6) times. Woods further alleges that after being kicked in the head, a member of the police force pulled him up to his feet by holding the back of his neck and felt like he was being choked. As a result of these events, he sustained bruising and swelling to his face, head and neck, dizziness and shortness of breath and considerable distress, shock and pain.

This complaint was investigated by the Professional Standards Command (PSC). Prior to the completion of the Category 2 investigation, Rolfe was arrested and charged for offences in relation to the death of Kumanjayi Walker as a result of this, issues identified during the Category 2 investigation have not been put to Rolfe.

The category 2 investigation addressed two allegations one relating to improper conduct (excessive use of force) relating to the six kicks to the head and the second relating to the being lifted up by the back of the neck.

The outcomes of these allegations, detailed in the draft report of Acting Senior Sergeant Richard Magree<sup>69</sup>, were that there was insufficient evidence to sustain the allegation relating

<sup>68</sup> Refer CAP2019-342 – Draft Final Report of A/S/Sgt Richard Magree- Folder 71 Folio 43

<sup>69</sup> Refer CAP2020-027- Draft Final Report of A/S/Sgt Richard Magree – Folder 71 Folio 43

to Woods being kicked in the head and that there was no evidence to support the allegation of Woods being lifted to his feet by the neck.

Several ancillary issues were identified during the investigation:

- The investigation identified that neither Rolfe or Sergeant Kirby had activated their body worn video cameras; and that Constable Hansen had activated his camera and then deactivated it early (8 seconds total recording).
- The investigation identified that no use of force form case note entry was raised for this apprehension
- The investigation identified that Constable Kirstenfeldt's interactions with woods at time were rude and uncivil.
- The investigation identified that Sergeant Kirby was present during the interactions between Kirstenfeldt and Woods and failed to stop or condemn the behaviour.
- Additionally, complaints about the officer's behaviour were made directly to Sergeant Kirby or in his presence by Woods through his interactions with police, again Kirby failed to acknowledge the complaints.

It is noted that prior to the completion of the Category 2 investigation, Rolfe was arrested and charged for offences in relation to the death of Kumanjayi Walker. Issues identified during the Category 2 investigation have not been put to Rolfe.

It is also noted that a three-year extension in relation to potential disciplinary action under Part IV of the Police Administration Act 1978, was granted by Chief Judge Elizabeth Morris on 8 April 2020. Thus, placing this investigation and any outcomes in abeyance until such time as any criminal proceedings involving Rolfe are completed.

#### [IntInv2019-044](#)

This internal investigation relates to the circumstances already described in CAP2018-186 involving Malcolm Ryder. This investigation arose from comments and findings made by Local Court Judge Borchers in the criminal proceedings against Mr Ryder on charges of hinder police and assault police in Alice Springs Local Court on 9 May 2019.

In the proceedings his Honour, Judge Borchers, found the evidence provided during the hearing by Constables Rolfe and Zendeli to be unreliable, contrary to body worn video footage provided and made the following statement in his findings:

*"I find that Constable Rolfe's evidence lacks credibility. He lied. He has lied in a statutory declaration about what happened in the bedroom. Nobody can say how Malcolm Ryder was knocked out but him and he surmises that it may- that Ryder may have hit his head while he was being tackled to the ground<sup>70</sup>"*

As a result of the Court outcomes and comments by Judge Borchers, a review of the previous complaint investigation was requested by NAAJA and the Ombudsman's Office. As the new information contained allegations of criminal offences (Perjury, Fabricating evidence, make false statement) the matter was referred to the Northern Territory Police Special References Unit (Detective Sergeant Sonia Kennon) for investigation.

A file was prepared and submitted to the NT Police Judicial Operations Section initial review prior to being sent to the DPP for an opinion<sup>71</sup>. The file was reviewed by Superintendent

<sup>70</sup> Refer IntInv2019-044- Memo- Opinion – D/Sgt Sonia Kennon – Folder 71 Folio 43

<sup>71</sup> Refer IntInv2019-044- Memo- Opinion – D/Sgt Sonia Kennon – Folder 71 Folio 43

Richard Bryson who identified a number of elements that in his view required further investigation before the files were presented to the DPP. In particular the elements that required further investigation were particularisation of the material fact and obtaining further information from the attending members and providing the opportunity for the subject officers to respond to the allegations<sup>72</sup>.

Further investigations were undertaken in the form of requests from statements from Constables Lehrain, Chatterton, Geranios and Bonney all of whom declined after seeking advice from the Northern Territory Police Association. A request was made to Judge Borchers for a statement which was also declined, an interview was offered to Constable Zendeli who declined on advice from legal counsel<sup>73</sup>.

At the conclusion of the additional inquiries the standard of the file was unable to be progressed further than that at the time of its initial submission. On this basis the advancement of a criminal prosecution was ceased on the view that there was insufficient evidence to provide a reasonable prospect of conviction<sup>74</sup>.

The matters were then referred back to the Professional Standards Command for further investigation from a disciplinary perspective.

On 8 April 2020, a three-year extension in relation to potential disciplinary action under Part IV of the Police Administration Act 1978, was granted by Chief Judge Elizabeth Morris on 8 April 2020. The disciplinary investigation and any outcomes are in abeyance until such time as any criminal proceedings involving Rolfe are completed.

#### *IntInv2020-001*

This internal investigation relates to an incident that occurred on 12 October 2019, where Alice Springs Police officers were conducting patrols outside of the Bojangles licensed premises when they witnessed a male person physically push, threaten and attempt to head-butt a female near the Alice Springs Town Council offices.

The police officers conducting the patrol were Constables Rolfe, Sykes, Hansen, Boja and Crotty accompanied by Sergeant Kelly.

Officers Rolfe and Hansen ran towards the disturbance, ground stabilise and detain the male person (identified as Albert Bailey) who sustained a laceration to the head requiring nine (9) stitches during his arrest.

The female victim (identified as R■■■ H■■■) was the partner of Albert Bailey (Bailey). H■■■ was adamant that nothing had occurred, that she did not wish to make a complaint of assault, did not want Bailey arrested and did not wish to take out a domestic violence order.

Bailey was arrested by police for the purpose of obtaining a Domestic Violence Order pursuant to sections 84 and 41 of the *Domestic and Family Violence Act 2007* (DVFA)<sup>75</sup>.

Bailey was conveyed to the Alice Springs Hospital by police for treatment of his injuries, and after being treated and discharged from hospital, he was conveyed home by police and issued a Police Domestic Violence Order under the provisions of section 41 of the DVFA.

This matter was referred to PSC for investigation, after application was made to withdraw the s.41 Domestic Violence Order. On 31 December 2019, the then OIC of Alice Springs

<sup>72</sup> Refer IntInv2019-044 – Memo – JOS to Supt Crime – Folder 71 Folio 43

<sup>73</sup> Refer IntInv2019-044 – Memo - OIC SRU to Supt Crime – Folder 71 Folio 43

<sup>74</sup> Refer IntInv2019-044 – Memo – OIC SRU to Supt Crime – Folder 71 Folio 43

<sup>75</sup> Refer IntInv2020-001 – Statement of Zachary Rolfe – Folder 71 Folio 43

Prosecutions, Senior Sergeant Alex Brennan, sought to have the order withdrawn, due to the order being contested and a lack of evidence from police to support the confirmation of the order. The request was not approved, and Senior Sergeant Brennan continued inquiries to obtain the evidence required.

Part of those inquiries included reviewing the BWV of officers involved in the arrest of Bailey (including that of Rolfe). Senior Sergeant Brennan formed the view that the footage did not reflect well on NTPF. Senior Sergeant Brennan raised these concerns with the author of this report (who at that time was Acting Assistant Commissioner Crime), the concerns being around the nature of the arrest and the injuries sustained by Bailey. The author then referred the matter immediately to Professional Standards Command for review and consideration<sup>76</sup>.

The matter was allocated to Detective Senior Constable Megan Burke, who undertook inquiries in the form of directed interviews with subject officers. An interview plan was prepared in relation to subject officer Rolfe, however, on March 8, 2021, a critical decision was made by Deputy Commissioner Smalpage that the interview with Rolfe was not to occur prior to the trial set down for July 2021 in relation to the death of Kumunjayi Walker.

On 8 April 2020, a three-year extension in relation to potential disciplinary action under Part IV of the Police Administration Act 1978, was granted by Chief Judge Elizabeth Morris on 8 April 2020. The disciplinary investigation and any outcomes are in abeyance until such time as any criminal proceedings involving Rolfe are completed.

#### *IntInv2020-007*

This internal investigation relates to the failure of Rolfe to disclose information or correctly answer questions in his application for the Northern Territory Police relating to adverse records from his service with the Australian Defence Force; his involvement in an incident in Townsville which was investigated by police and for which he received a fine, and his applications for employment with Victoria Police, Queensland Police and Western Australia Police.

The above issues were discovered on 6 January 2020, by Detective Senior Sergeant Lee Morgan while undertaking his duties as an investigator as part of the Operation Charwell<sup>77</sup> Coronial Investigation. On discovering these issues, the matters were referred to PSC for further review and investigation.<sup>78</sup>

The investigation obtained documentary evidence in the form of recruitment documents for the Northern Territory Police and applications submitted to other law enforcement agencies, Rolfe's previous military history; and information relating to the incident in Townsville. An interview was also requested with Rolfe; however, this was declined on his behalf by his legal counsel.

As the failure to disclose information or correctly answer questions occurred while Rolfe was not a member of the police force, the provisions of Part IV of the Police Administration Act (PAA) in relation discipline are not applicable. On this basis the matter was investigated pursuant to the provisions of section 154 of the Police Administration Act:

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<sup>76</sup> Refer IntInv202-001 – IAPRO Summary – Folder 71 Folio 43

<sup>77</sup> Operation Charwell is the Operation name given to the comprehensive response to and investigations arising from the death of Kumunjayi Walker at Yuendumu

<sup>78</sup> Refer IntInv2020-007 – IAPRO Summary – Folder 71 Folio 43

### 154 False representations

*(1) A person shall not knowingly make a false representation in connection with an application for appointment to the Police Force.*

*Maximum penalty: 4 penalty units or imprisonment for 3 months or both.*

*(2) A prosecution under this section shall only be brought with the written consent of the Commissioner and upon the finding of guilt of a person of an offence under subsection (1), the Commissioner may terminate the appointment, if any, of the person so found guilty.*

*(3) A prosecution under this section must be commenced within 6 months after the Commissioner first becomes aware that the false representation has been made*

The investigation noted that section 154 does not make it an offence to not disclose information and, on this basis, Rolfe's failure to disclose his previously adverse history with ADF does not constitute an offence.

However, it is reasonable to conclude that by marking the 'No' box with respect to his Defence Force History and his application for employment with other Police Forces on his application form, Rolfe knowingly made a false representation in connection with his application for appointment to the Northern Territory Police Force, contrary to section 154(1) of the PAA.

A brief of evidence was prepared for consideration of the Commissioner and provided to the DPP for an opinion. The specific details of the opinion provided by the DPP are unknown and subject to legal and professional privilege.

On the 6 July 2020, PSC received formal notification that the Commissioner of Police had declined to consent to a prosecution being brought against Rolfe, as such the matter did not proceed further.

### *IntInv2020-033*

This internal investigation relates to an allegation of use of excessive force by Rolfe during his response to a reported disturbance in Alice Springs on 18 February 2019. The alleged behaviour was identified during a review of all Use of Force Case Note Entries (UOF CNE) submitted by Rolfe by Detective Senior Sergeant Andrew Barram (Barram) as part of his role in the investigation into the death of Kumunjayi Walker.

The specifics of the alleged use of excessive force are that on 18 February 2019, Rolfe in company with Constables Hansen and McKay attended a disturbance at the Araluen Arts Centre Park in Alice Springs. The officers observed two male persons (later identified as David Tjpanangka and Larry Jabanunga) fighting<sup>79</sup>.

Verbal commands were given for both to stop fighting, Rolfe approached both persons, at which point David Tjpanangka approached Rolfe and refused to sit on the ground.

Rolfe then pushed Tjpanangka in the chest causing him to fall to the ground, Jabanunga then also approached Rolfe who then pushes him in the chest causing him to fall to the ground. Both persons were issued infringement notices, Tjpanangka was left in the care of sober family and Jabanunga was conveyed to Alice Springs Hospital for treatment of an existing medical condition.

<sup>79</sup> Refer IntInv2020-033 - Promis 8886461 – Case Summary – Folder 71 Folio 43

A UOF CNE was completed by Rolfe at the time and checked by Sergeant Robert Kent provided the following comments:

*KENT reports, BWV reviewed. Force used to prevent two intoxicated adult males from fighting. Member essentially use a double open-handed push both males, causing them to fall to the ground on a grasses surface. Force was minimal and necessary to prevent further altercation and injury to members. Controlled, passive verbal communication was used to direct the males. No immediate issues noted<sup>80</sup>.*

In the statement made by Barram detailing his review of the UOF for this incident, he observed that the BWV shows that on police arrival, two heavily intoxicated men were having an altercation.

Due to their intoxication, they were staggering and that the punches they were throwing were without strength or coordination and were ineffective as far as causing injury<sup>81</sup>.

Barram the goes on further to state that there was no need to push either of these men over as they were not a threat to Rolfe or anyone else. Barram states that this was an excessive use of force, being any force where none is needed, and no regard appears to have been given to the potential for injury that could be caused.

It is also observed that no attempt was made by the attending police to lower the men on to the ground in a controlled manner. Barram states that the force used was not reasonable, necessary, proportionate, or appropriate.<sup>82</sup>

The investigation of this matter was allocated to PSC. Detective Senior Constable Megan Burke (DSC Burke) was allocated the investigation. DSC Burke undertook directed interviews with Constables Hansen and McKay and plans were made to undertake a directed interview with Rolfe.

On 8 March 2021, a critical decision was made by Deputy Commissioner Smalpage that PSC members were not to travel to Canberra to interview Rolfe over any matters. In relation to outcomes, in terms of disciplinary proceedings the discovery date of the alleged breach of discipline was 25 February 2020 therefore the statute for the alleged breaches expired on 25 August 2020. No application for an extension in relation to this matter was made as the matter had been investigated other than the interview with Rolfe. No outcome under Part IV of the PAA is envisioned<sup>83</sup>.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>80</sup> Refer IntInv2020-033 - Promis 8886461 – Use of Force Review – Folder 71 Folio 43

<sup>81</sup> Refer IntInv2020-033- Statement Barram – Folder 71 Folio 43

<sup>82</sup> Refer IntInv2020-033 - Statement Barram – Folder 71 Folio 43

<sup>83</sup> Refer IntInv2020-033 – IAPRO Summary Report – Folder 71 Folio 43

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Statement of Claudia Campagnaro*

On the 19<sup>th</sup> of August 2020, Detective Acting Superintendent Kirk Pennuto and Acting Senior Sergeant Wayne Newell obtained an audio statement from Claudia Campagnaro (Campagnaro), a former Northern Territory Police officer and former fiancée of Rolfe, as part of the criminal investigation into the death of Kumunjayi Walker.

During the interview Campagnaro disclosed to the investigators that Rolfe had another officer from within the Alice Springs Police Station, scratch and injure him, to justify the force he had used during his arrest of Malcolm Ryder<sup>84</sup>.

These allegations are now subject to investigation by investigators from the crime command and also the Police Standards Command. Advice from both of these areas, is that the investigations are ongoing. Campagnaro has been subpoenaed as a witness in the upcoming criminal trial.

[REDACTED]

[REDACTED]

<sup>84</sup> Refer Transcript of Statement Claudia Campagnaro – Folder 39 Folio 22

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>85</sup> [REDACTED]

<sup>86</sup> Refer Report Professor A. McFarlane – Operation Charwell, pg.15, Folder 71 Folio 40

<sup>87</sup> Refer Report Professor A. McFarlane – Operation Charwell, pg.15, Folder 71 Folio 40

<sup>88</sup> Refer Report Professor A. McFarlane – Operation Charwell, Pg. 4 – Folder 71 Folio 40

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Comment & Considerations

The career review of Rolfe highlights a number of concerning issues in relation to Rolfe and behaviours exhibited while performing his duties as a police officer and also while off duty.

Of an even greater concern is the absence of systems to identify these behaviours and where systems were in existence the failure of those systems to provide any form of intervention.

From the day of submitting his application to join the Northern Territory Police, Rolfe appears to have deliberately failed to disclose information of offences committed by Rolfe in Queensland, dishonest behaviours committed during his service history with the Australian Defence Force, and his submission of applications to join other police forces within Australia.

The failure of NTPFES recruiting systems in place at the time resulted in Rolfe being offered and accepting employment with the Northern Territory Police. An offer, that in all likelihood would not have been made had the information been disclosed or due diligence being applied to the recruitment process and requests for information.

**NOTE** – A more detailed review and analysis of this issue is provided later in this report under the heading Recruitment Procedures.

As highlighted in the preceding paragraphs, during his short career, up until his suspension, Constable Zachary Rolfe had already recorded 46 'Use of Force' involved entries in PROMIS.

A 'Use of Force' Case Note Entry (CNE) is required to be entered in PROMIS by the involved Police Officer's in accordance with the *Police General Order and Instruction: Operational Safety and the Use of Force*. In accordance with the directions provided in this General Order and Instruction Police should only use force that is reasonable, necessary, proportionate and appropriate to the circumstances. Police should only use the minimum amount of force required for the safe and effective performance of their duties.

When force is used supervisors have a responsibility to audit the force used by the police officers to determine whether the force used was reasonable, necessary, proportionate and appropriate.



**21 October 2019** – Kumunjayi Walker released from custody into care of CAAPU with electronic monitoring.

**29 October 2019** – Kumunjayi Walker absconds from CAAAPU. Alice Springs Police commence local inquiries as to his whereabouts.

**6 November 2019** – Yuendumu Police receive information that Kumunjayi Walker is at House 577 Yuendumu. Walker assaults police during attempted arrest. PROMIS 9126603.

**7 November 2019** – Sgt Frost attends House 577 and requests assistance from Robertson family to have Kumunjayi Walker surrender. Agreement reached that Kumunjayi Walker could attend upcoming funeral and they will then try and get him to come to the police station.

**8 November 2019** – Funeral moved to Saturday 9 November 2019.

### **9 November 2019**

**1100 Hours** - Health Clinic staff inform Yuendumu Police that they intend to leave Yuendumu immediately due to concerns about their ongoing safety.

**1135 Hours** – Sgt Frost notifies her supervisor, Superintendent Jody Nobbs, that Health Staff have left community after overnight crime series. Kumunjayi Walker is still at large in community and suspected of being involved. Sgt Frost requests ‘specialist support’ and the Dog Operations Unit from Alice Springs to assist in arrest of Kumunjayi Walker. Nobbs informs Frost to prepare a brief Operational Order.

**1200 Hours** – Supt Nobbs contacts Alice Springs Watch Commander Senior Sergeant Shaun Furniss requesting he investigate staffing situation with a view of deploying IRT to Yuendumu for possibly the weekend.

**1351 Hours** – Supt Nobbs contacts Acting Assistant Commissioner Travis Wurst seeking approval for IRT deployment. Approval provided for ‘general support’ for Yuendumu Police and to arrest Walker.

**1400 Hours** – Supt Nobbs calls Furniss and advises IRT deployment approved. IRT member to take ‘full kit’ to Yuendumu but to wear ‘blues’ (police uniform). S/Sgt Furniss tasks call-out to A/Sgt Shane McCormack. McCormack calls trained IRT members, Constables Hawkings, Eberl, Rolfe and Kirstendfeldt on duty.

**1430 – 1500 Hours** – IRT members arrive at Alice Springs Police Station. Constable Rolfe looks up profile of Walker on PROMIS and shows BWV footage of Yuendumu incident from 6 November to other IRT members.

**1600 Hours** – IRT members deploy to Yuendumu in 2 separate vehicles. ‘Ops Order’ not yet prepared by Sgt Frost/A/Sgt McCormack.

**1624 Hours** – A/Sgt McCormack sends Sgt Frost draft Arrest Plan.

**1659 Hours** – Arrest Plan/Ops Order finalised by Sgt Frost and forwarded to Supt Nobbs/Watch Commanders, IRT members (who are in transit and who do not have access to email), Yuendumu Police members and various other supervisors (including Territory Duty Superintendents).

**1730 Hours** – DOU member Donaldson arrives in Yuendumu.

**1830 Hours** – IRT members Rolfe/Kirstendfeldt arrive in Yuendumu.

**1837 Hours** – Rolfe is shown a copy of the Operations order and takes a photograph of the document with his phone<sup>89</sup>.

**1850 Hours** – IRT members Hawkings/Eberl arrive in Yuendumu.

**1900 Hours** – IRT and DOU member hold short briefing and depart Yuendumu Police Station for House 577.

**1902 Hours** – IRT members and DOU arrive at House 577. IRT members informed Kumunjayi Walker not present. House 577 searched by Rolfe/Kirstenfeldt. Ethan Robertson informs IRT that Kumunjayi Walker has gone to his 'mother's house – House 511.

**1918 Hours** – IRT and DOU attend Houses 511 & 518. Rolfe and Eberl enter yard of House 511.

**1920 Hours** – Eberl informs Rolfe someone is inside House 511. Rolfe asks residents in yard if they have seen Kumunjayi Walker.

**1920 Hours** – Eberl enters House 511 followed by Rolfe. Male person located in living room and provided members with the name Vernon Dickson<sup>90</sup>.

**1921 Hours** – Rolfe uses an image on his mobile telephone to positively identify the male person as Kumunjayi Walker. Tells Kumunjayi Walker to put hands behind his back. Kumunjayi Walker immediately commences to struggle.

**1921 Hours** – Kumunjayi Walker removes a pair of scissors from his person and stabs Rolfe once to left shoulder.

**1922 Hours** – Rolfe responds by removing Glock pistol from holster and firing once into Kumunjayi Walker's back while Kumunjayi Walker wrestles with Eberl. Kumunjayi Walker and Eberl fall to ground and Rolfe moves forward and discharges firearm 2 times in quick succession (double tap) into the chest of Kumunjayi Walker. Kumunjayi Walker restrained and scissors removed from hand. Kumunjayi Walker handcuffed and removed from House 511.

**1926 Hours** – Kumunjayi Walker conveyed back to Yuendumu Police Station. Sgt Frost requests immediately assistance from Yuelemu Health staff and assistance from RFDS.

**1930 Hours** – Yuelemu Health staff notified of shooting.

**1931 Hours** – Supt Nobbs calls Sgt Frost after receiving a call from Health (Gill). Frost confirms that Walker has been shot by IRT.

**2014 Hours** – CPR commenced on Kumunjayi Walker.

**2015 Hours** – Yuendumu Police (S/C Hand) call St. Johns. Advice provided to members performing CPR.

**2025 Hours** – Supt Nobbs briefs RFDS pilot. Pilot (Damien Myles) holds safety concerns around travel to Yuendumu. Nobbs to provide contingency (safety) plan. Nobbs contacts Police Airwing pilot who advises he is on night flying exercise. Pilot directed to return to Alice Springs immediately.

<sup>89</sup> Refer Images obtained from Mobile Phone : Folio 49 Folder 138 Statement Det Brett Wilson (Phone review) pg. 38

<sup>90</sup> Vernon Dickson, dob [REDACTED] 2001, is an actual resident of Yuendumu/Alice Springs and, similar to Walker, is recorded in PROMIS (ID 1360392) as cared for by Leanne Oldfield.

**2036 Hours** – IRT members declare Kumunjayi Walker deceased.

**2039 Hours** – Divisional Superintendent Nobbs advised of Kumunjayi Walker's death. A/DCOP White declares 'Critical Incident/Major Crime'. Southern Crime tasked to investigation.

**2039 Hours** – Supt Nobbs directs all police staff to evacuate police station and to leave Yuendumu.

**2045 Hours** – Supt Nobbs contacts RFDS to advise that patient is deceased. RFDS stood down.

**2102 Hours** – Direction received from A/DCOP Beer for all members to remain at Yuendumu Police Station.

**2109 Hours** – Yuelamu Health staff arrive and confirm Kumunjayi Walker as deceased.

**2245 Hours** – Alice Springs Police Airwing (Polair) arrive with Alice Springs police members.

**2305 Hours** – NOK (Eddie Robertson) contact Yuendumu police requesting update on Walker's condition. No information provided.

**2357 Hours** – Rolfe returns via Polair to Alice Springs. A voluntary NISK authority is obtained from Rolfe for the offence of Manslaughter. Rolfe conveyed to Alice Springs Hospital. No statement obtained from Rolfe.

### **Sunday 10 November 2019**

**0007 Hours** – Sgt Zhang, Police Forward Commander now at Yuendumu, rings NOK advising Kumunjayi Walker is still receiving medical treatment.

**0038 Hours** – Rolfe conveyed to Alice Springs Hospital. Treated for minor wound to left shoulder.

**0117 Hours** – TRG members arrive at Yuendumu from Darwin.

**0450 Hours** – Eddie Robertson is contacted by Police at Yuendumu and requested to attend Yuendumu Police Station. On arrival he is told Kumunjayi Walker is deceased and is asked to identify the body which he declines to do.

**0644 Hours** – Yuendumu Police and TRG inform NOK (Rekeisha Robertson).

**0724 Hours** – Crime Scene established at House 511.

**0738 Hours** – Major Crime (D/A/Supt Pennuto) appointed as lead (senior) investigator in charge replacing Southern Crime (Supt Foley) after intervention and direction from the Coroner.

**0808 Hours** – NAAJA notified of death by Supt Vicary.

**0951 Hours** – Incident Management Team (IMT) meeting (No.1) – Chaired by Assistant Commissioner Beer.

**1409 Hours** – Alice Springs Investigation team view body worn video of Rolfe.

**1403 Hours** – IMT meeting No. 3 – '*No conversation with Rolfe prior to 1800 hours*'.

**1501 Hours** – Body worn video of Rolfe viewed by D/A/Supt Pennuto & D/S/Sgt Malogorski. Concerns held over lawfulness of Rolfe’s actions.

**1701 Hours** – First ‘Investigation Management Committee’ (IMC) meeting held in Darwin. Chaired by A/DCOP White. Critical decision reached to interview Rolfe under caution.

### **Monday 11 November 2019**

**1209 Hours** – D/A/Supt Pennuto, Commander Dole (Crime) and Assistant Commissioner Anticich (Crime & Integrity) meet with DPP Director Jack Karczewski. BWV viewed by DPP and criminal offence suggested. DPP request a ‘short file’ by Wednesday 13/11/2019 to consider and confirm opinion in relation to possible charges<sup>91</sup>.

### **Tuesday 12 November 2019**

#### **0848 – IMC (No.2)**

**1355 Hours** – Supt Pollock appointed as Commissioned Officer in Charge of Coronial Investigation by A/DCOP White.

**1524 Hours** – Rolfe formally invited by Investigation Team (D/Sgt Wells/DSC Ralph) to partake in Electronic Record of Interview. Rolfe declines.

**1700 Hours** – Rolfe travels to Darwin accompanied by his mother.

### **Wednesday 13 November 2019**

**1024 Hours - IMC (No.3)** – Assistant Commissioner Anticich requests ‘short file’ be prepared for pending arrest of Rolfe by 1300 hours.

**1352 Hours** – Follow up meeting between D/A/Supt Pennuto, Commander Dole, AC Anticich and DPP (Karczewski and his Deputy Matthew Nathan). DPP recommend charge of murder (verbally).<sup>92</sup>

**1547 Hours – IMC (No.4)** – Decision to proceed with arrest of Rolfe confirmed.

**1414 Hours** - 2nd statement obtained from Eberl where he indicates he received an injury during arrest of Walker. Injury photographed.

**1705 Hours** – Rolfe arrested by A/Supt Pennuto in Darwin.

**1847 Hours** - Rolfe charged with murder. Granted conditional Bail by Local Court Judge (Birch).

## **Circumstances Surrounding the Death of Kumanjayi Walker**

### **Arrest for Property Offences at Yuendumu – March 2019**

<sup>91</sup> NOTE – This information was subject to a claim of legal and professional privilege in the criminal proceedings and was redacted from reports provided to Defence.

<sup>92</sup> NOTE – This information was subject to a claim of legal and professional privilege in the criminal proceedings and was redacted from reports provided to Defence.

On 18 March 2019 Kumunjayi Walker was arrested by Yuendumu Police and then sentenced to 16 months imprisonment in the Alice Springs Local Court for a range of property related offences and a breach of a suspended sentence. On 26 June 2019 Kumunjayi Walker appeared in Alice Springs Local Court and his sentence was suspended subject to a conditional release.

He remained in custody to complete his minimum sentence (8 months – backdated to commence from 22 February 2019) and for suitable conditions pertaining to his pending release to be arranged. On 21 October 2019 Kumunjayi Walker was released into the custody of Northern Territory Department of Corrections (Probation and Parole) and ordered to attend the Central Australian Aboriginal Alcohol Programmes Unit (CAAAPU) Residential Rehabilitation Program.

This required Kumunjayi Walker to enter a 12-month good behaviour bond and to live in the residential units at CAAAPU in Alice Springs. He was also required to abide by a curfew whilst wearing an electronic monitoring device (EMD) attached to his ankle.

## Kumunjayi Walker Absconds from CAAPU

At around 0040 hours on 29 October 2019 Kumunjayi Walker removed his electronic monitor and left CAAAPU without authority. Police were notified by Community Corrections (PROMIS 9118468 refers). Later the same day Alice Springs Police attended a previous address of Kumunjayi Walker at [REDACTED] Street, Alice Springs before attending Warlpiri Camp making further attempts to locate Kumunjayi Walker without success. Sergeant Michael Hickey added an 'Alert' to the PROMIS identity of Kumunjayi Walker as an 'Active Target' for Breach of Suspended Sentence.

At around 0800 hours on Wednesday 30 October 2019 Sergeant Robert Kent and members of his patrol group attended the Warlpiri Camp after information was relayed to them by Sergeant Julie Frost at Yuendumu indicating that Kumunjayi Walker had been sighted at the Camp. Kumunjayi Walker was not present when police attended.

Northern Territory Corrections applied for a 'Warrant for Breach of Order Suspending Sentence' and a warrant for Kumunjayi Walker's arrest was then approved on 5 November 2019.

## Attempt to Arrest Kumunjayi Walker – Yuendumu 6 November 2019

On Wednesday 6 November 2019 Yuendumu Police received information from a community source that Kumunjayi Walker had returned to the community and could be located at House 577. Yuendumu Police were aware that Kumunjayi Walker had an outstanding warrant for breaching his suspended sentence.

Two police Officers, Senior Constable Chris Hand (Hand), and Senior Constable Lanyon Smith (Smith) attended House 577. On arrival they have a conversation with the owner of the residence, Ethan Walker, who informed them that Kumunjayi Walker was located in a bedroom inside the house together with his wife, Rekeisha Robertson.

Hand and Smith entered the residence and knocked on the door of the bedroom several times. The door was eventually opened by Rekeisha Robertson, the room was in darkness. Hand shone his torch in the room which revealed Kumunjayi Walker laying on a bed.

Smith moved forward into the room but was prevented from doing so by Robertson. Kumunjayi Walker got up from the bed stating he wanted to talk to "Lottie", Hand advised not until they had put handcuffs on him. During this time Robinson was still preventing police from entering the room, and Hand took her by the arm and pulled her out of the doorway.

Robertson then started screaming about her arm. At this point Kumunjayi Walker, bent down and picked up a small axe, advanced towards and threatened both officers with the axe.

Both officers tactically retreated, and Kumunjayi Walker continued to move out of the bedroom advancing towards Hand, threatening him with the axe. As soon as Kumunjayi Walker got close to the door of the house, he dropped the axe and ran off towards nearby bushland.

This incident was captured on the Body Worn Video (BWV) cameras worn by both Smith and Hand<sup>93</sup>.

Following the assault on police, Sergeant Frost attended the scene of the incident (House 577) and spoke to the grandparents of Rekeisha Robertson, Eddy and Lottie Robertson. Eddy Robertson is a recognised senior elder in the Yuendumu Community. Frost informed him that the assault on her members was a serious matter and that Kumunjayi Walker had two hours to hand himself in to police, otherwise she would be forced to get resources from town. Eddy Robertson stated he would try to get Kumunjayi Walker to surrender himself stating '*we can't make him*'.

Sergeant Frost then returned to the station and contacted Superintendent Nobbs (Nobbs), she advised him of what had occurred, that Kumunjayi Walker had run away, and that Kumunjayi Walkers family would contact police if he returned. Nobbs inquired as to the welfare of the members involved, whether they had sustained injuries and whether there were any pressing needs<sup>94</sup>.

Frost then proceeded to add an 'Alert' to the police Information database (PROMIS) formally indicating that Kumunjayi Walker was now an arrest target for the recent assault on Police. She added an additional PROMIS 'Alert' added to his name warning '*May be Violent towards Police*'. Kumunjayi Walker, who was already listed in the Alice Springs Police Intelligence 'Tactical Co-ordination Group' (TCG) document as having a warrant for his arrest, was upgraded as a priority 'Arrest Target' This intelligence document was electronically distributed to all Alice Springs Police patrol groups who then endeavoured to locate nominated outstanding offenders, including Kumunjayi Walker, when duties allowed.

Despite returning to House 577 later that night, Kumunjayi Walker failed to surrender himself to police.

The following day, Thursday 7 November 2019, Sergeant Frost, accompanied by Aboriginal Community Police Officer Derek Williams, re-attended House 577 and attempted to negotiate the arrest of Kumunjayi Walker with the Robertson family.

The family advised that Kumunjayi Walker was due to attend a funeral in Yuendumu on Friday and that if he were permitted to attend the funeral then family would endeavour to bring him into the (Yuendumu) Police Station following the funeral.

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<sup>93</sup> Refer BWV Hand and Smith – Folder 1 Folio 2

<sup>94</sup> Refer Statements of Sergeant Julie Frost and Supt Jody Nobbs – Folder 42 Folios 38-39 and Folder 47 Folio 98

Sergeant Frost agreed to this request but again warned the family that if Kumunjayi Walker did not surrender himself then additional forces from Alice Springs would be called in to assist in apprehending Kumunjayi Walker, including the Police Dog Unit<sup>95</sup>.

Later in the day, Frost received a call from Nobbs where they had a conversation about plans at a local level to locate and arrest Kumunjayi Walker. During this conversation Frost advised that the whereabouts of Kumunjayi Walker was unknown, from the members perspective there were no concerns about safety or Rekeisha Robertson based on her interactions with Kumunjayi Walker the night before, and that the plan was Eddie Robertson would bring Kumunjayi Walker to the police station or SMS police as to Kumunjayi Walkers location if he returned to the residence.

Frost and Nobbs discussed the issue that the plan meant Kumunjayi Walker would remain at large in the community and would attend the funeral. The plan was endorsed on the basis of it being a no force and less force option and provided an opportunity for Kumunjayi Walker to surrender himself. Endorsement of the plan also established that police would not actively pursue Kumunjayi Walker until after the funeral.

On the evening of Thursday 7 November 2019, based on information received and awareness of the tactical intelligence document, Alice Springs Police Sergeant Evan Kelly took his patrol group to the Warlpiri Camp and endeavoured to locate Kumunjayi Walker. Their endeavours were unsuccessful, and due to the absence of reasonable grounds, Sergeant Kelly and his patrol group did not enter any houses as part of their inquiries. Constable Zachary Rolfe and Constable James Kirstenfeldt were part of the police contingent who attended the Warlpiri Camp.

On Friday 8 November advice was received that the funeral at Yuendumu was not going ahead and was re-scheduled for Saturday 9 November 2019. It is believed Kumunjayi Walker remained in the community following the assault upon Yuendumu Police on 6 November up until 9 November 2019.

During the day Frost and Nobbs had a phone conversation regarding the fact that Kumunjayi Walker had still not presented himself and no contact had been received from Robertson. They then discussed whether the arrest of Kumunjayi Walker should be conducted at the funeral. They again decided that no attempts would be made to locate or arrest Kumunjayi Walker in accordance with the agreement with family and the hope that he would surrender himself after the funeral.

## Comment & Considerations

The review of police actions in relation to the initial incident, several instances where systems were not applied, did not exist or could be improved. They are detailed in the following paragraphs.

### *Attempt to Arrest Kumunjayi Walker*

The attempt by police officers Hand and Smith to arrest Kumunjayi Walker for his breach of suspended sentence, and the manner in which Kumunjayi Walker resisted arrest and avoided apprehension, were the catalyst for the chain of events that were to unfold at Yuendumu over the next several days.

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<sup>95</sup> According to Eddie Robertson Sergeant Frost warned that she was going to get a 'Task force'. Refer Transcript of Interview with Eddie Robertson – Folder 56 Folio 50

The body worn video footage of the incident is disturbing and confronting and demonstrates how quickly the situation escalated. From the statements provided by Hand and Smith and the review of the footage, it appears the main reason for Kumanjaya Walker's extreme and violent response was his perception that SC Hand had somehow injured or struck Rekeisha Robertson while attempting to move her from the doorway to the bedroom. As noted in the statement from SC Hand, "*Walker got angry and said something like 'you fucken hit my wife'.*"

On reviewing the information provided, the actions of Hand and Smith in attempting to arrest Kumanjaya Walker were appropriate. They had information from a community source that he was at the house, and they had lawful authority to arrest and take Kumanjaya Walker into custody. In regard to the identification risks, it is noted that both members had been involved in with Kumanjaya Walker previously, and that there were no 'risk alerts' in relation to Kumanjaya Walker other than his being wanted for breaching his suspended sentence.

It is also important to note the actions of SC Hand at the time where he was subject to the violent and threatening behaviour of Kumanjaya Walker. Hand advises that his reasons for not drawing his firearm was the fact that he was not prepared to shoot and take Kumanjaya Walker's life, his concerns for people who were around the house, and in his mind the immediate consequences of drawing your firearm and shooting someone in a remote community.

Whether consciously or unconsciously, Hand made the decision not to draw his firearm and use lethal force to defend himself and would rather have received a knock to the arm or a broken arm rather than shooting him. An act that demonstrated significant personal courage on the part of Hand, and something for which, when the time is right, he should be recognised for.

There are no considerations made in relation to the attempt to arrest Kumanjaya Walker.

### *Assessment of Incident – High Risk v Critical Incident*

A significant issue identified by the coronial investigation is the assessment applied to this particular incident by Superintendent Nobbs. The issue is important, as the manner in which an incident is assessed and classified determines triggers in policy and procedure relevant to that response, and in relation to the death of Kumanjaya Walker the subsequent police response.

In this particular instance the issue is whether the report of the incident which occurred on 6 of November should have been assessed as high-risk incident.

On being advised of the incident by Sergeant Frost, Superintendent Nobbs classified the matter as a critical incident. The term 'critical incident' has various references in Police policies that have different interpretations.

A review of policy and procedure undertaken by the Coronial Investigation team has located two policies where the term critical incident is used or defined.

In the '*Critical Incident Response*' Instruction and Procedure<sup>96</sup>, the term critical incident is defined as:

*Any event with the potential to cause psychological injury to people directly impacted or exposed to the event. This includes any threat, actual or perceived, to the life or physical*

<sup>96</sup> Refer Critical Incident Response Instruction and Procedure – Folder 23 Folio 11

*safety of the individual, or colleagues, and exposure to events involving actual or potential harm to others.*

Review of the *Critical Incident Response Instruction* reveals that the policy was to provide guidance in regard to potential psychological injury due to workplace exposure to traumatic incidents and provide guidance on when and how employee support services (ESS) should be contacted in relation to such matters.

Classifying an incident as a critical incident under this policy ensures, that ESS receive notification and triggers some level of support by that unit. It is noted that this instruction had been superseded at the time of the Yuendumu Incident.

In the instruction: *Major Crime, Major Investigation and Critical Incident Response*, a 'critical incident' is defined as;

*'A Critical Incident may include any matter where members are involved in the death (death in police custody) or serious injury of a member of the public resulting from contact with police (serious custody incident)'*

Review of the *Major Crime, Major Investigation and Critical Incident Response 'Instruction'*<sup>97</sup>, reveals that this policy provides guidance to investigators and senior managers involved in undertaking investigations that were formally declared as Major Crimes. The reference to Critical Incident, is to determine the level and nature of an investigative response to a matter that falls under the definition. It is noted that the nature of the incident on 6 November does not fall under the definition of critical incident in this instruction.

High Risk references are contained in the *Police General Order – Territory Response Group* which provides the following:

*High risk situations are difficult to define. Essentially the question is whether the real or impending violence or threat to be countered is such that the degree of force that could be applied by members would be found to be justified. The following criteria will assist in assessing high risk situations:*

- *seriousness of the offence committed by the suspect or offender;*
- *expressed intention of the suspect(s) to use lethal force;*
- *reasonable grounds to believe that the suspect(s):*
  - *may use lethal force;*
  - *has caused or may cause injury or death; or*
  - *has issued threats to kill or injure any person;*
  - *the suspect has:*
    - *a history of violence;*
    - *a propensity for violence; or*
    - *is exhibiting violence now;*

The General Order then goes on to advise that:

*Strict procedural controls have been placed on the deployment of the TRG in high-risk situations in accordance with national guidelines. The authorisation of a Service Head (Assistant Commissioner or above) is required to call out the TRG in any of these high risk or civil disorder situations.*

<sup>97</sup> Refer Major Crime, Major Investigation and Critical Incident Response Instruction – Folder 23 Folio 6

Applying the description of the assault on Hand and Smith by Kumunjayi Walker to the above criteria, clearly shows that during and immediately after the assault, Kumunjayi Walker meets all of the above criteria to be classed as a high-risk offender. It is unclear as to why Nobbs did not make that assessment at the time.

However, it is noted that in his interview, Superintendent Nobbs provided the following explanation regarding his use of 'critical incident' terminology in the context of his assessment of the failed attempt to arrest Kumunjayi Walker and the assault on members Hand and Smith, referred to as incident 1.

*On reflection of the Stat Dec I have provided earlier this year I recall utilising the term Critical Incident in the context to both, Incident 1: the Incident that involved Police officers Smith/Hand being threatened with an Axe on 6 November 2019 and Incident 2: the Fatal Police Shooting 9 November 2019.*

*While it is difficult for me to provide you with a definitive definition of my use of the term Critical Incident, as the term forms part of my broad policing vernacular and a term I use on a very regular basis, often very liberally. The term critical incident for me touches on/could impact a multitude of issues such as: member welfare, community confidence, community safety, are subjectively serious or matters that are political, environmental and internally sensitive.*

*While I certainly don't constrain or link the term critical incident to high risk incident in isolation, I recognise that a high risk incident will more often than not be considered a critical incident and equally that there is generally a heightened sense of urgency attached to an event where I utilise the term.*

*In the context of the two events above:*

*- Incident 1: after discussions with Sgt Frost about the nature/specifics/impacts of the incident on the night my assessment and subsequent utilisation of the term Critical Incident, related at the time to member welfare and the need for S/Sgt Potts to meet our welfare obligations to the members through ESS referral, the clear serious nature of the event and associated offences committed, the internally sensitive and inevitable interest that would arise from the incident from Police Management, hence my request for WEBEOC notification and ESS referral;*

*- Incident 2: the term Critical Incident in the context of this event I think is clear and touches across all of the considerations I have outlined above.*

It is apparent from the above response, that on receiving the phone call from Frost and the briefing on the incident at house 577 (referred to as incident 1 by Nobbs in interview) that although he acknowledged the seriousness of the incident, his focus was on the welfare of his officers and not on the apprehension of Kumunjayi Walker, who as Nobbs was aware, had run away and whose whereabouts were unknown.

It is possible that the actions of Frost in advising the family to assist in influencing Kumunjayi Walker to hand himself in ( a tactic / arrangement that is used on a regular basis by police in communities) combined with the fact that Kumunjayi Walker had not demonstrated any signs of being a danger to the broader community (acknowledging that his behaviour was such that he would be considered a significant threat to police), was an additional mitigation to the risks posed by Kumunjayi Walker and his assessment as high-risk target.

It is also possible that Nobbs' an extremely experienced Superintendent with a wealth of experience of policing in Alice Springs and the surrounding regions, was subject to an element of unconscious bias, in relation to the policing response to the actions of Kumunjayi Walker,

given that incidents of this nature, and police being threatened with weapons and improvised weapons in the Northern Territory is unfortunately a regular occurrence.

Nonetheless, the decision of Nobbs to classify this incident as a critical incident and not a high-risk incident identifies a critical systemic issue for NTPF. The decision removed the requirement for Nobbs to brief Assistant Commissioner Wurst on the incident and also the opportunity for the incident to be reviewed and considered by the TRG Tactical Commander, an opportunity that may have resulted in a decision to deploy TRG or to deploy IRT, however, the IRT deployment under these circumstances would have required detailed risk assessments and response plans prior to their deployment.

From a systems point of view the absence of uniform risk assessment and decision-making model is a significant systemic issue for the NTPF. The use of the term critical incident is also a system issue. The term critical incident is one that is common in the police vernacular, however as highlighted in the NTPF it is currently reference in 2 policies, which creates confusion as to its application.

### Considerations

NTPFES should consider the use of the term critical incident in any its policies, and if the term is required, developing a specific definition of the term, and detailing the purpose and objectives of declaring an incident a critical incident.

NTPFES should consider its current operational risk assessment and decision-making models, with a view to ensuring consistency in how risk assessments are conducted and how decisions are made and recorded in the future.

### *Actions of Yuendumu Police up to the 9<sup>th</sup> of November*

The actions of police over the next two days primarily focused on the development of a plan at the local level to have Kumunjaya Walker surrender himself after he had attended the funeral of a family member, with a commitment from family that if this was allowed, they would endeavour to bring him in.

Both Frost and Nobbs discussed the proposal and, on this occasion, discussed potential risks, in relation to the safety of Rekeisha Robertson and the fact that Kumunjaya Walker would be at large in the community until after the funeral. Having considered these risks, the plan was approved on the basis of it requiring no force or minimal force from police and provided no requirement for police to actively pursue Kumunjaya Walker.

Advice was received from the community that the date of the funeral had been changed and that it was now to take place on Saturday 13 November. Nobbs and Frost again discussed the issues detailed above, noting that Kumunjaya Walker had not surrendered himself. Consideration was given to arresting Kumunjaya Walker at the funeral, however, both agreed this would be a significant risk and would go against the agreement with the family.

At the time these arrangements were made, and not knowing what was to occur, the arrangements and assessments made by Nobbs and Frost are appropriate, they identified a solution that involved the community and family which gave them the opportunity to influence Kumunjaya Walker to surrender himself peacefully and without the requirement to use force, a plan that was aligned with the 10 operational safety principles.

It is acknowledged that the arrangements and plans enacted by Nobbs and Frost sit outside of what may be considered traditional police practices, and that these plans had elements of risk,

which included Kumunjayi Walkers family not being able to convince him to surrender or Kumunjayi Walker re-offending while at large.

However, as observed previously this is a practice that is used and has been used regularly for years in stations throughout the Northern Territory, where the nature of the offending and the circumstances enable it to occur, without any harm coming to the offender or the police.

Again, the systemic issues identified relate to the undertaking of risk assessments and recording decisions and rationale for the decision.

### Considerations

NTPFES should consider its current operational risk assessment and decision-making models, with a view to ensuring consistency in how risk assessments are conducted and how decisions are made and recorded in the future.

## Request for Assistance

During this period several property crimes were committed in Yuendumu. These crimes were committed on properties occupied by the Yuendumu Health staff (PROMIS 9129313 – Trespass – 9/11/19, PROMIS 9129310 – Criminal Damage – 9/11/19, PROMIS 9128959 – Criminal Damage/Attempt Unlawful Entry – 9/11/19, PROMIS 9126489 – Unlawful Entry/Stealing - 6/11/19 refers). Due to his prior criminal history, Kumunjayi Walker was suspected by local police to have had some involvement, however this was not to be the case<sup>98</sup>.

The health staff expressed concerns over their safety to their management in Alice Springs. At around 1100 hours on the morning of 9 of November, the order was then given to evacuate the Yuendumu Health Clinic leaving the community without health staff. The nearest clinic to Yuendumu is Yuelamu (Mount Allen) Health Clinic, some 50 kilometres away. Yuelamu Health Clinic remained open with the expectation, that in the advent of a medical emergency, they would service the community of Yuendumu.

During the morning of Saturday 9 November 2019, the OIC at Yuendumu, Sergeant Frost contacted her Divisional Supervisor, Superintendent Jody Nobbs, to advise that local police resources were physically exhausted due to having to constantly deal with ongoing offending at all hours. She further briefed Nobbs about the pending departure of local Health staff.

She informed him that there was now an expectation by Yuelamu Health staff that Yuendumu Police would accompany them on any future call-out at Yuendumu with Yuendumu Police themselves having insufficient staff to accommodate this request.

In her contact with Superintendent Nobbs, Sergeant Frost requested the services of 'specialist' police members from Alice Springs to supplement local police resources.

This would in turn enable Yuendumu Police members to gain some respite after working continuous long hours.

Superintendent Nobbs was supportive of the request and was also cognisant of the fact that Kumunjayi Walker remained at large within the community following on from the assault of the

<sup>98</sup> A 12 year old male was later identified as the offender for an unlawful entry at Yuendumu. PROMIS #9126489 refers.

two police officers the previous Wednesday (6 November 2019) and the plan to arrest Kumanjayi Walker after the funeral.

## Comments & Considerations

The request for assistance from Sergeant Frost appears to be predicated around the crime series occurring at the health staff residence at Yuendumu, and the advice from the Clinic that they were withdrawing their resources, and the fatigue that members at Yuendumu were experiencing having worked excessive hours responding to incidents at Yuendumu.

Without diminishing the nature of the offending committed against police by Kumanjayi Walker, it is evident that, the first priority for Frost was support for general policing at Yuendumu, and the second priority the arrest of Kumanjayi Walker. This may also have been the case given the arrangements and plan that had been put in place with family.

In considering systems and opportunities for improvement. At the time that the request for additional assistance was made, a detailed plan, operations order and briefing should have been commenced and provided to Supt Nobbs to enable him to seek the approval for deployment of the IRT members and provide a detailed and informed briefing to the Assistant Commissioner.

The development of a detailed plan, operations order and briefing at this juncture would have provided greater situational awareness to the Watch Commanders and enabled IRT members to be comprehensively briefed on the duties they were to undertake.

### Considerations

NTPFES should consider undertaking an assessment of current policies, procedures and training in relation to development of operation plans, operations orders and operational briefings, using the lessons learnt from this incident to drive reform and improvement.

## Approval for Deployment of Alice Springs Immediate Response Team (IRT)

Given information provided by Frost in relation to the recent overnight unlawful entries, and the additional requirements the withdrawal of health staff may have for police, Superintendent Nobbs, in the absence of Commander Currie<sup>99</sup>, sought the approval of his Acting Assistant Commissioner Travis Wurst to sanction the use of the Immediate Response Team (IRT)<sup>100</sup>.

Acting Assistant Commissioner Wurst was aware of the incident that had occurred at Yuendumu on the Wednesday (6 November 2019) and having been advised of the recent property offending and developments in relation to the funeral readily approved the deployment of the IRT in a general support role. Noting the time of approval as 1.51 p.m. <sup>101</sup>.

In formulating a loose plan for the arrest of Kumanjayi Walker and, in considering that Kumanjayi Walker had the propensity to run from police, Sergeant Frost also requested the

<sup>99</sup> Commander Currie was on rostered days off and out of phone contact.

<sup>100</sup> A requirement under the Immediate Response Team policy – Refer Folder 12 Folio 34

<sup>101</sup> Supt Nobbs reported that he contacted Wurst at 11.45 am, Wurst reports receiving the phone call at 1.15 pm. This discrepancy is unable to be reconciled, but is critical in the approval process, as an earlier deployment may have provided more time for comprehensive briefings to be provided and plans to be developed.

services of a Police Dog Operations Unit (DOU) member in addition to the IRT. This (verbal) request was also approved by Acting Assistant Commissioner Wurst. No request for a trained negotiator to accompany the IRT was made or considered at this time.

With this approval granted Superintendent Nobbs arranged, through the Alice Springs Watch Commander, Senior Sergeant Shaun Furniss, for four members of the Alice Springs Police IRT to be called on duty in order to provide relief to Yuendumu members and to arrest Kumunjayi Walker.

Senior Constable First Class Adam Donaldson (35 years), Registered Number 2775, Dog Operations Unit, and his canine, Drax, were called on duty and sent to Yuendumu to assist Yuendumu members and the IRT.

The Alice Springs Watch Commander, Senior Sergeant Furniss, delegated the responsibility for the IRT call-out and any briefing to the IRT to Acting Sergeant Shane McCormack. With the usual Sergeant in charge of the IRT capability (Sergeant Lee Bauwens) on recreation leave it was left to Acting Sergeant McCormack to complete this task. At the time Acting Sergeant McCormack was on duty at Alice Springs Police Station performing duties as the supervisor of the Auxiliary members tasked to Point of Sale Inspection (POSI) duties. Acting Sergeant McCormack was also considered a suitably qualified and experienced senior member of the IRT.

Following a further brief conversation Senior Sergeant Furniss and McCormack contacted Superintendent Nobbs to answer a few questions in regard to what he actually wanted. , from that conversation they formed the abbreviated view that the IRT were to be dispatched to Yuendumu in their blues and in a general support role primarily to arrest Kumunjayi Walker

The request from Superintendent Nobbs clearly indicated that the IRT were to take their swags as it was likely they would remain in Yuendumu for several days. The instruction from Superintendent Nobbs mandated that the IRT were to wear 'blues' (regular police uniform) while in Yuendumu instead of wearing their alternate camouflage apparel (this is also an indicator that IRT are being deployed in a general support role and not in any form of 'tactical role). Superintendent Nobbs further instructed that the IRT were to take their 'full kit' to Yuendumu. In addition to aerosol subject restraint (ASR) (oleo capsicum spray), Glock pistols and electro-muscular control device (ECD) this included shotguns capable of discharging 'bean bag' rounds and AR15 rifles.

Acting Sergeant McCormack proceeded to randomly call out IRT qualified members, subject to their availability. McCormack worked down the list of IRT members until he had 4 members willing to attend the call-out.

The IRT members called on duty were:

Constable First Class Anthony Hawkings (49 years), Registered Number 3496

Hawkings is a former New Zealand police officer who served between 2005 and 2014 before being recruited to the NT Police on 10 February 2014. Hawkings was posted to Alice Springs on 25 April 2014 and remained in that location for the duration of his career.

He has served on relief postings to Alpururulam, Haasts Bluff, Apatula and Lyente Apurte police stations prior to joining the IRT on 26 November 2018 and since that time, according to IRT records, has deployed on 6 general support operations. He passed his last IRT weapons qualification on 7 August 2019. Hawkings had some previous experience of approximately 6 months service in remote communities in 2014 - 2015.

Constable First Class Anthony Eberl (39 years), Registered Number 3552

Eberl is a former South Australian police officer who served between 2012 and 2015 before being recruited to the NT Police on 15 June 2015. Eberl was posted to Alice Springs on 2 October 2015. He served a month in Apatula in January 2017 before returning to Alice Springs. Eberl joined the IRT on 26 November 2018 and since that time, according to IRT records, has deployed on 2 general support operations. He passed his last IRT weapons qualification on 7 August 2019. Eberl had 6 weeks remote service experience in 2017.

Constable Zachary Rolfe (28 years), Registered Number 3638

Rolfe is a former Australian Defence Force (ADF) member who, after transferring from the regular Army to Reserve Forces, attended paramilitary training in weapons handling, close personal protection and urban warfare with Trojan Securities International in the United States of America. He was posted to Alice Springs on 14 December 2016 where he remained working in a General Duties Capacity. During his time in Alice Springs, he did not undertake any relief work in remote communities. He has deployed on 7 IRT callouts since completing his IRT training in May 2018. He passed his last weapons qualification on 13 July 2019. Rolfe had no remote service experience.

Constable James Kirstenfeldt (35 years), Registered Number 3658

Kirstenfeldt is a former ADF member who, like Rolfe, conducted paramilitary type close protection training with Ronin International in the United Kingdom in 2010. He joined NT Police in November 2016.

He was posted to Alice Springs on 9 June 2017, where he has remained. He has not served in remote aboriginal communities. He joined the IRT on 26 November 2018 and since that time, according to IRT records, has deployed on 4 general support operations. He passed his last IRT weapons qualification on 7 August 2019. Kirstenfeldt had no remote service experience.

The Dog Operations Unit member called out was:

Senor Constable First Class Adam Donaldson (35 years), Registered Number 2775

Donaldson is a former ADF member who joined the NT Police on 26 February 2007. Donaldson has served in Alice Springs, Nyirripi and Darwin prior to joining the Dog Operations unit in 2015. Donaldson is not a member of the IRT and was deployed in response to the request from Sergeant Frost and approval from Acting Assistant Commissioner Travis Wurst.

Senior Sergeant Furniss called out the DOU member Donaldson around 2.00 p.m. and Donaldson immediately departed from his home residence to Yuendumu.

## Comments & Considerations

Analysis of the circumstances surrounding the deployment of the IRT highlights a number of systemic issues, which are detailed below:

### *Risk Assessment and Review*

In the period from the original incident on 6 November to the morning of 9 November the risk assessment and profile in relation to Kumanjayi Walker had not changed. However, with the spate of unlawful entries that had occurred overnight, the decision of Health Staff to withdraw

from the community, additional police being brought into the community from Nyrripi, additional police in the form of the IRT being brought into the community from Alice Springs, the date of the funeral being changed and Kumunjayi Walker still being a large. The original considerations for determining the classification of the incident as a critical incident should have been revisited and reassessed.

It is possible that the mitigations in place through the plan for Kumunjayi Walker to surrender himself with the support of family, may not have changed the original decisions when the current situation was compared against the criteria for a high-risk incident.

However, as there is no indication that any risk review was undertaken or requested, the opportunity for the situation to be re-assessed, for the Assistant Commissioner to be fully briefed and provide fulsome consideration to the plan, the risks and the mitigations, and the resources to be deployed to provide support to Yuendumu, was missed.

### *Approval Process*

The IRT SOP does not provide specific details of what the request and approval process should be in relation to an IRT deployment, other than specifying that general support requests require Commander approval and High-Risk deployments require Assistant Commissioner approval.

The approval for deployment of IRT on 9 November 2019, was given on verbal briefings and without supporting documentation in terms of detailed plans, risks assessments or operations orders.

The absence of a formal request and approval system, which provides details of what information is required to make an informed deployment decision, is a significant vulnerability for the NTPF and the members who are requested to approve the deployment.

Although the verbal briefings provided on 9 November may have supported and justified the approval to deploy the IRT, the absence of the detailed supporting information meant that the communication of important information as to the intent of the deployment, the mission, and the specific roles and responsibilities, were lost or misinterpreted.

As this was a planned response, and not a response to a 'no notice' incident or event, the approval to deploy the IRT could have been delayed to enable this information to be obtained and considered.

### *Command and Control IRT*

The IRT SoP, does not stipulate a mandatory requirement for nomination of a suitably experienced member to be designated as the team leader. Ordinarily, the member of senior rank would assume this responsibility by virtue of rank, or where the officers are all of the same rank the member with highest length of service.

The decision to deploy the IRT was made without a designated team leader being nominated or identified, resulting in the IRT members establishing their own chain of command and nominating their own team leader.

## Considerations

NTPFES should consider:

- its current operational risk assessment and decision-making models, with a view to ensuring consistency in how risk assessments are conducted and how decisions are made and recorded in the future.
- undertaking an assessment of current policies, procedures, and training in relation to development of operation plans, operations orders, and operational briefings, using the lessons learnt from this incident to driver reform and improvement
- implementing a policy direction that any approval for the deployment of the IRT must also include the approval and nomination of an appropriately qualified team leader.

## Deployment of IRT Members

At around 2.30 p.m. on Saturday 9 November 2019, the 4 IRT members began arriving at the Alice Springs Police Station.

No briefing notes, operations order or action planes were available. In the absence of any prepared written brief (Operation Order/Arrest Plan) the four IRT members were briefed verbally by Sergeant McCormack. The briefing provided little detail of the background and rationale for their deployment or of the intent of Superintendent Nobbs on deploying them.

The rationale and purpose behind the 'general duties / general support' deployment was lost. No mention was made of the family of Kumunjayi Walker being intermediaries to assist in him handing himself in to police or the approval from Nobbs that police were not to actively pursue or arrest Kumunjayi Walker until after the funeral. Indeed the message and mission and had dissipated in to a mission of 'Simply arrest Walker'.

The message from Superintendent Nobbs to take their 'full kit', seemingly was not passed on to the IRT members. As a result, the IRT decided themselves on what equipment to take with them to Yuendumu.

Between the four members, no specific IRT 'team leader' was appointed and no briefing documents or written risk assessment on Kumunjayi Walker had been prepared or provided by the time they departed the Police Station. According to one of the IRT members called on duty, Constable James Kirstenfeldt;

*'...like I said we weren't there as IRT, we were there as a force multiplier<sup>102</sup>.'*

Prior to leaving the Police Station the 4 IRT members did take the opportunity to view the BWV footage recorded by members involved in the attempted arrest of Kumunjayi Walker at Yuendumu on Wednesday 6 November 2019. The IRT member, Constable Zachary Rolfe, was the member who presented the footage to the other 3 IRT members.

<sup>102</sup> 'Force Multiplier' is a military term defined as 'A capability that, when added to and employed by a combat force, significantly increases the combat potential of that force and thus enhances the probability of successful mission accomplishment'.

Donaldson, the Dog Unit member, travelling on his own, left well in advance of the IRT members and arrived at Yuendumu around 5.45 p.m. The 4 IRT members were travelling in 2 vehicles arriving in Yuendumu 15 – 20 minutes apart between 6.40 p.m. – 7.00 p.m.

Due, in part, to having been told to wear their police uniforms the IRT members elected not to take their full kit (including camouflage uniform) but instead randomly armed themselves with the following equipment/weapons;

Eberl – Glock pistol, AR15 rifle, ASR, Baton, 10 Calibre Ballistic Vest (, no ECD)

Hawkings – Glock pistol, AR15 Rifle, ECD, ASR, Baton, 10 Calibre Ballistic Vest (no load bearing vest)

Kirstenfeldt – Bean Bag Shotgun, Glock pistol, ECD, ASR, Baton (no load bearing vest)

Rolfe – Glock pistol, ECD, ASR, Baton

Earlier that day Acting Sergeant McCormack had been requested by Sergeant Frost to assist with the development of an Operation Order. Sergeant Frost had been instructed by Superintendent Nobbs to contact McCormack as.

*'...he's done an Ops Order for it before'<sup>103</sup>.*

Acting Sergeant McCormack, who had never before completed an Operations Order, compiled some detail around the arrest target (Walker) and then forwarded the information by email to Sergeant Frost and several other recipients at 4.24 p.m. Of note is the tasks of the IRT as detailed in this document are<sup>104</sup> :

- "Provide a local presence of armed police to uphold law and order in the community, provide support
- Arrest Walker and transport back to Alice Springs

Sergeant Frost added additional detail and then emailed the final plan to the (in-transit) IRT members and various supervisors at 4.59 p.m.<sup>105</sup>.

In this document the tasking of IRT is clearly stated as:

#### *Plan Day 1*

*Saturday 9 November 2019 – 11 pm – IRT Commence duty and conduct high visibility patrols and respond to call outs*

*Sunday 10 November 2019 – 5 am SDOU Donaldson and Yuendumu Alefaio commence duty along with IRT members to effect arrest of Walker*

The plan also detailed some procedures in the event Kumanjayi Walker was arrested and advised that if he was not arrested the IRT and SDOU were to stand down until Sunday evening where the same plan would be implemented again.

<sup>103</sup> Refer Statement (1) of Sergeant Julie Frost, P.35 – Folder 42 Folio 38

<sup>104</sup> Refer email McCormack to Frost – 9 November 2019, 16.24 hrs, - IRT call out – Yuendumu – Walker Folder 47 Folio 92

<sup>105</sup> Refer email Frost to Multiple recipients – 9 November 2019, 16.59 hrs, Arrest of █████ Walker Folder 42 Folio 38

Of critical importance was the fact that this plan had not been compiled or provided to the IRT members prior to their leaving for Yuendumu and that the locations of interest (houses 512, 515, 516 and 454), were incorrect, as Sergeant Frost later conceded.

*'....ah, the Ops Order that I put together had locations of interest but they were incorrect, however I knew I was going to correct the locations of interest when they got there'.<sup>106</sup>*

It is also noted that there is no mention in the plan of waiting until the family of Kumunjayi Walker were afforded the opportunity to assist with Kumunjayi Walker's proposed surrender post funeral.

## Comments & Considerations

The details of the actual deployment of the IRT members, after approval, also highlights several systemic and critical issues. Some of the issues identified have become a recurring theme, specifically they relate to risk assessment, decision making, development of plans, operation orders, and communication. The details of the issues identified are provided below.

### Communication Failures

After receiving the request from Sergeant Frost for 'specialist resources' on the Saturday morning 9 November 2019 Superintendent Nobbs seemed quite clear that the IRT were to be deployed for the following reasons;

- Yuendumu police were in need of respite and accordingly a relief general duty response was required out at Yuendumu. Property crimes had increased and Walker was suspected of being involved.
- Health staff at Yuendumu had left the community and extra police resources would be required to assist Yuendumu health staff if they were required to attend Yuendumu.
- Kumunjayi Walker was still outstanding (noting a funeral was planned for Saturday and Kumunjayi Walker had been permitted to attend without intervention as arranged between Yuendumu Police and family).

The review of information and evidence clearly shows that the above rationale is not the rationale communicated by Superintendent Nobbs to Senior Sergeant Furniss.

The dialogue that occurred between Superintendent Nobbs and Senior Sergeant Furniss, seems to have dissipated into a mixed and unclear message that revolved around sending a contingent of IRT members and the DOU to Yuendumu in their standard police uniform (instead of the IRT camouflage uniform) to arrest Kumunjayi Walker.

This message was then passed on to the IRT members who were being called out by Acting Sergeant McCormack and by the time McCormack briefed the IRT members (the DOU member left Alice Springs for Yuendumu with no briefing whatsoever) their 'mission' had been reduced to "simply" arrest Walker. The rationale and purpose behind their 'general duties' deployment was lost. The message from Superintendent Nobbs to take their 'full kit' was also not passed on, to the extent that the IRT members took whatever equipment they felt necessary with Constable Eberl electing to not even take his Taser.

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<sup>106</sup> Refer Statement (1) of Sergeant Julie Frost, P.16 – Folder 42 Folio 38

Had the message from Superintendent Nobbs been properly recorded and passed on to the IRT members they would have understood exactly that they were being deployed in a general support role, and why they were required to wear their 'blues' (uniform) and given details of the tasks they were expected to perform in addition to the arrest of Kumanjayi Walker.

The communication failures detailed above, then had a flow on effect into other areas.

### *Absence of Operational Orders, Plans and Risk Assessments*

At the time the IRT had arrived at the Alice Springs Police Station for a pre-deployment briefing, the operations order requested by Superintendent Nobbs had not been completed.

As highlighted above this resulted in the briefings provided containing little or any detail of the specifics of the deployment, clarity of their mission, their specific taskings or direction as to any command structure within the team itself or upon their arrival at Yuendumu.

This is evidenced in the interview with Kirstenfeldt where he states "*we weren't there as IRT, we were there as a force multiplier*"

### *Absence of Command Structure*

As highlighted previously, there is no stipulated requirement of the IRT to be deployed with a suitably experienced team leader. At the time of the IRT deployment on 9 November, no team leader had been nominated.

In the absence of a formally designated team leader, the IRT members seemed to have identified Rolfe as the team leader, as he had given one of the briefings prior to their deployment.

### *General Comment*

The issues highlighted above, clearly demonstrate significant system failures in regard to the Actual deployment of the IRT. Important information in terms of operational briefings, risk assessments and their specific taskings were not known. The failure to appoint or nominate a designated team leader, meant that the team was devoid of formal leadership, and relied on the team itself to identify one of its members as the person in charge.

Taking in to account all of these factors, it is clear that the IRT should not have been allowed to deploy at the time they did. The response to the request for assistance from Sgt Frost was a planned response, it was not a response to a 'no notice incident'.

The deployment of IRT should have been delayed until such time as the information contained above had been provided and appropriate briefings and orders had been given. This would then have enabled the IRT to develop their own plans and equip themselves accordingly.

An alternative option could also have been for the IRT members to be advised that on their arrival at Yuendumu, the above information and briefings would be provided by Sergeant Frost as the OIC of that station and Police Forward Commander.

This however, as we know, was not the case and the IRT members departed Alice Springs, with no clarity of mission, clear direction of tasking or advice as to chain of Command.

## Considerations

It should be noted that previous considerations relating to risk assessments, decision making, and operations orders, plans and briefings are also applicable to the issues identified here.

No additional considerations are suggested.

## Arrival of IRT at Yuendumu

Donaldson, the Dog Unit member, travelling on his own, left well in advance of the IRT members and arrived at Yuendumu around 5.45 p.m. On arrival he and Sergeant Frost had some general discussions about what was going to happen but nothing formal<sup>107</sup>. Donaldson then went for a drive around the community.

The 4 IRT members were travelling in 2 vehicles arriving in Yuendumu 15 – 20 minutes apart between 6.40 p.m. – 7.00 p.m. The vehicle containing Kirstenfeldt, and Rolfe arrived first. Frost engaged them and provided an informal mini brief, in what she describes as a 'Challenging conversation' where they weren't really listening<sup>108</sup>

*'...the members really wanted to take over the conversation...and it was sort of um kind of said to me that you know "This is how we do it"..."This is what we do when we come to job, this is how"...I got the impression that they didn't really want me to tell them how to do their job...'*<sup>109</sup>

IRT members Hawkings and Eberl arrived 20 minutes after. Sergeant Frost held a relatively informal briefing with the IRT members, handing a copy of the completed arrest plan for Kumanjayi Walker (the 'plan') to the IRT members<sup>110</sup>. The mission they were essentially to achieve was to provide high visibility policing in Yuendumu in relation to the recent unlawful entries the other part was to assist in the arrest of Kumanjayi Walker.

As per the plan the IRT members were instructed by Sergeant Frost that they were to commence general patrols of Yuendumu at 2300 hours (11.00 p.m.) that night and, if Kumanjayi Walker failed to surrender himself prior to then, they would attempt to locate and arrest him the following morning at 0500 hours (Sunday 10 November 2019). This would involve the assistance of a local Police member, Constable Felix Alefaio, who previously had extensive dealings with Kumanjayi Walker and knew him well by sight<sup>111</sup>.

The IRT members were also informed by Frost that the local Health staff had left the community and the Community Health Clinic was closed. Despite Kumanjayi Walker being regarded as a 'high risk' offender there was no plan to attempt to utilise a Police negotiator.<sup>112</sup>

<sup>107</sup> Refer Statement (1) of Sergeant Julie Frost – Folder 42 Folio 38

<sup>108</sup> Refer Statement (1) of Sergeant Julie Frost – Folder 42 Folio 38

<sup>109</sup> Refer Statement (1) of Sergeant Julie Frost. P.33 – Folder 42 Folio 38

<sup>110</sup> A photograph of a page from the plan was discovered during the analysis of Rolfe's mobile phone

<sup>111</sup> The IRT members were not familiar with Walker other than their observations of him on the BWV recorded by Yuendumu Police on 6 November 2019.

<sup>112</sup> Senior ACPO Derek Williams was available to assist in this regard if required. No consideration was given to deploying any one of at least 6 trained negotiators available at Alice Springs.

Frost in her statement recalls telling the IRT members “if *you are doing intel and come across him, lock him up absolutely*”. She also states that “when they left the station the plan was high visibility policing and for them to cover Yuendumu members for respite”<sup>113</sup>.

## Comments & Considerations

The above information is a version of what is believed to have occurred when the IRT members arrived at Yuendumu Police Station on 9 November 2019, taken from the statements and accounts provided by all members.

The arrival of the IRT members and the DOU member, were spread out over roughly an hour. As each team arrived, Frost advises that she had informal conversations with them in relation to what was occurring in the community and what was going to happen, it is noted that during her interview Frost continues to reinforce that these conversations were “nothing formal”.

Frost also advises that her interaction with Kirstenfeldt and Rolfe was challenging, with those members indicating that they “didn’t want to listen”. What Frost actually meant by this comment, or what the details of the actual conversation were remain unknown and have not been explored by the coronial investigation due to both officers being witnesses in the criminal proceedings. These details may be revealed in the criminal proceedings, or if not in any future coronial proceedings.

As detailed above a copy of the ‘arrest plan’ which was the email Frost had sent out (and which the IRT members had not seen as they were in transit) was provided to the IRT members (evidenced by a photograph of the document located on Rolfe’s phone when it was seized after his arrest) while they were at Yuendumu.

Although there appears to be some disparity in the subsequent recollection and interpretation of the original accounts provided and what information was provided and to whom, a reasonable hypothesis, based on the information known to the coronial team is that:

- the IRT members were briefed on the plan (this is the plan emailed by Frost), and the specifics of the plan including their primary mission which was the requirement to undertake high visibility community patrols.
- as per the plan, attempts to arrest Kumanjayi Walker would occur at 5 am in the morning and would involve the IRT members and Constable Alefaio.
- Frost would not be in attendance due her conflict of interest (this relates to the assault on Hand and the fact that Frost and Hand are in a relationship).
- That prior to completing the briefing Frost advised the IRT members if they were going to conduct intel and they came across him (Kumanjayi Walker), they could ‘lock him up’
- That when they left the station the plan for IRT was high visibility patrols.

The issues identified in the previous paragraphs of the report are also relevant here. The ‘informal’ conversations, mini- briefings, reference to difficult conversations, lack of detail in briefings and specifics in relation to identified actions, and lack of acknowledgement of command and rank created a high level of ambiguity and an environment where people were able to operate in autonomy. It also identifies the failures of existing systems, policies and procedures.

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<sup>113</sup> Refer Statement 1 Sergeant Julie Frost – Folder 42 Folio 38

### Considerations .

The considerations previously identified throughout the report are relevant and applicable here. Issues relating to the concept of Command, have been addressed through considerations provided under that specific heading, and are detailed later in this report.

## Movements of Kumunjayi Walker during Saturday 9 November 2019.

Kumunjayi Walker and Rekeisha Robertson spent the night together at House 577 waking late on Saturday morning. The walked down to the local sports oval. Kumunjayi Walker admitted to smoking cannabis at some time during the day. Kumunjayi Walker and Robertson separated during the afternoon with Rekeisha visiting an Auntie's house. Kumunjayi Walker walked back to House 577 before informing Ethan Robertson that he was going to the Red House (511). Kumunjayi Walker walked to this residence where he conversed with Leanne Oldfield and Noel Dixon in the yard of the premises. When Police drove towards the house Kumunjayi Walker went inside.

## Actions of IRT

Instead of adhering to the 'Operation Order' that had been prepared by Sergeant Frost (and approved by Superintendent Nobbs) and the plan discussed in the informal briefing from Sergeant Frost, the IRT members disregarded the plan in preference to completing the 'mission' they believed had been assigned to them by the stand-in Officer In Charge of the IRT - Acting Sergeant McCormack.

Achieving and completing that 'mission' involved an immediate attempt to locate and arrest Kumunjayi Walker within the Yuendumu Community under the auspices of intelligence gathering. <sup>114</sup>.

As stated by the IRT member HAWKINGS during his (second) interview.

WOOD: *So, I think you just stated before that you got to Yuendumu roughly about 7 o'clock?*

HAWKINGS: *Roughly, yes –*

WOOD: *Yep.*

HAWKINGS: *- roughly, from thinking, I'm pretty sure it was about 7 o'clock we had that Briefing.*

WOOD: *Yep*

WOOD: *And how long after you (sic) arrival did that, this Brief occur?*

HAWKINGS: *Pretty much immediately upon our arrival.*

WOOD: *Yep.*

HAWKINGS: *Um, it was, 'lets get in there and let's pretty much get out there and locate him'*

WOOD: *Yep.*

<sup>114</sup> Details of any IRT proposed arrest plan were never formalised

HAWKINGS: *I think the idea was to get back to the Station, hopefully I, identify him, locate him quickly and then return back to the Station and come back to Alice Springs.*

Hawking's admitted that Sergeant Frost was not party to this brief held between the IRT members and DOU member at Yuendumu. It was apparent from their engagement with Sergeant Frost on their arrival that they were not expecting any brief or direction from Sergeant Frost other than the provision of advice as to where they may be likely to locate Kumunjayi Walker.

The IRT members, who were all of rank junior to Sergeant Frost, clearly intended to proceed with their own 'arrest' agenda despite being given the details of the plan approved by a Divisional Superintendent and being told that an agreement had been set in place between Sergeant Frost and Kumunjayi Walker's family - which was to attempt to have Kumunjayi Walker surrender following the funeral of his uncle, ██████████ Brown.

That funeral was still in progress when the IRT and the DOU member left the Station to undertake their intelligence gathering activities<sup>115</sup>. Despite his availability the IRT did not consider or attempt to take Constable Alefaio with them<sup>116</sup>.

After a short briefing outside the Yuendumu Police Station the IRT armed themselves with the following weapons<sup>117</sup>;

Constable Hawkings – AR15 rifle<sup>118</sup>, Glock pistol, Taser, OC Spray, baton

Constable Eberl – Glock pistol (no taser), OC Spray, baton (his AR15 rifle was left at the Yuendumu Police Station)

Constable Rolfe – Glock pistol, Taser, OC spray?, baton

Constable Kirstenfeldt – Shotgun (beanbag rounds)<sup>119</sup>, Glock pistol, Taser, OC Spray, baton

Constable Donaldson, the Dog Operation Unit member, carried his Glock pistol, ASR, ECD and Baton (in addition to his Police dog).

It must be highlighted that the IRT members were not expecting to receive any orders from Sergeant Frost when they arrived in Yuendumu. They were aware of the 'mission' they believed they had been tasked by Acting Sergeant McCormack and remained focussed on quickly locating and arresting Kumunjayi Walker.

Despite a suggestion by Sergeant Frost that the IRT members left the station on an intelligence gathering exercise it was clear they were going to attempt to locate and arrest Kumunjayi Walker, as evidenced by the manner in which they had armed themselves, which on first blush does not seem consistent with intelligence gathering activities.

The result of the clash between the mission the IRT believed they had been tasked by McCormack and the plan approved by Supt Nobbs and tasked to them by Frost is well

<sup>115</sup> The funeral service commenced with a ceremony held at the Yuendumu Basketball Sports precinct followed by a burial service at the Yuendumu Cemetery.

<sup>116</sup> Constable Alefaio was included in the 'Arrest Plan' prepared by Sgt Frost for this very reason.

<sup>117</sup> The IRT members did not take their 'full kit' as requested by Superintendent Nobbs and instead chose to randomly select lethal and non-lethal weapons of their preference.

<sup>118</sup> Constable Hawkings carried this weapon exposed when in the Community

<sup>119</sup> Constable Kirstenfeldt did not carry this weapon in the Community, and it remained in his Police vehicle.

summarised by Professor Alexander McFarlane AO, in his report "Operation Chartwell (sic) re: Constable Zachary Rolfe as follows;

*'It also appears that at the briefing held by Sergeant Frost after the IRT members had arrived at Yuendumu, there had been no direct consensus reached as to their individual roles....this was an ambiguous situation where despite the high level of risk associated with attempting an arrest of Mr Walker no strategy appears to have been discussed for how this was to occur....Constable Rolfe was deployed into an ambiguous environment that had little structure and direction with no apparent supervisor or team leader defined.'*

At around 7.00 p.m., with daylight fading, the IRT and DOU member drove directly to House 577, the residence of Eddie Robertson where Kumunjayi Walker usually stayed with his girlfriend, Rekeisha Robertson.

Rekeisha's father, Ethan Robertson, was located sitting in the yard of House 577 and informed the IRT members that Kumunjayi Walker had left the residence only minutes earlier. Despite being told this Rolfe asked Robertson if he could search the house, and then he and another IRT member proceeded to walk through and search the premises, while another IRT member was outside of the house carrying and openly displaying a military style automatic rifle<sup>120</sup>.

Ethan Robertson then informed Constable Rolfe that Kumunjayi Walker had most likely gone to his grandmother's house. He identified House 511 to Constable Rolfe as the location where Kumunjayi Walker's grandmother, Margaret Nabanunga Brown, lived. All IRT members had their BWV cameras operating at this time and all actions and conversations were recorded.

## Comments & Considerations

As mentioned previously there is some disparity in and divergence from the original accounts provided by members, as to the tasking's and directions provided.

What is known and what can be established is that after engaging with Sergeant Frost at the Yuendumu Police Station, the IRT members had a briefing with one another and the DOU member. From this discussion the IRT members armed themselves with the accoutrements described above and commenced activities to locate and arrest Kumunjayi Walker, under the auspices of intelligence gathering.

This was in complete contravention of the plan approved by Superintendent Nobbs, the general support approval for their deployment by Assistant Commissioner Wurst, and the agreement made with Eddie and Lottie Robertson to give Kumunjayi Walker an opportunity to surrender himself after the funeral had finished.

The intention of these plans and this planned response being to:

- minimise / reduce the risk to police and Kumunjayi Walker in undertaking an arrest,
- avoid or at least minimise the level and use of force required in arresting Kumunjayi Walker
- avoid the possibility of a violent confrontation
- avoid the necessity to undertake forced entry searches

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<sup>120</sup> Refer Body Worn Video of Rolfe, Folder 1 Folio 2

- providing Kumunjayi Walker, the opportunity to pay his respects to his deceased relative, and
- ensure the safety of not only police but the broader community by having the community and Kumunjayi Walkers family assist in influencing Kumunjayi Walker to surrender himself and not requiring additional police or specialist police units to facilitate the arrest.

Given the outcome of the previous failed attempt, and the knowledge gained from that incident, any attempt to confront or arrest Kumunjayi Walker by police could escalate rapidly into a violent confrontation, which may well result in the use of lethal force.

The actions of the IRT, as detailed above identify a number of issues.

- The failure to acknowledge chain of command in relation to the plan approved by Assistant Commissioner Wurst and Superintendent Nobbs, and the operational priorities, of the plan explained to them by Sergeant Frost.
- The lawfulness of the search. It is acknowledged that the grounds for the search were made out, as Kumunjayi Walker by committing the assault on Hand and Smith, had committed an offence punishable by a term of imprisonment more than 6 months. As to whether a belief on reasonable grounds that Kumunjayi Walker 'is at the place' is questionable, especially in light of the advice provided by Ethan Robertson that Kumunjayi Walker had left minutes before. (It is unclear whether Robertson gave tacit consent for the search to be carried out).
- The lack of planning or risk assessment in relation to their decision to attend and search house 577. No consideration appears to have been given to the occupants of the house, the possibility that Kumunjayi Walker may have been in the premises.
- The open display and carriage of the AR15
- The failure to consider the 10 safety principles and ICENCIRE, it would appear that the IRT members had made their own decision to actively locate Kumunjayi Walker, choosing options that were more likely to result in the use of force, than the options of the plan that were put in to place to minimise the requirement to use force.

### Considerations

No considerations are provided. It is envisaged that this issue is one that will be a key part of the criminal proceedings, and that those proceedings may provide answers as to the members motivations and rationale for taking this course of action.

## IRT attendance at House 511 Yuendumu – Confrontation with Kumunjayi Walker

At around 7:19pm, the five (5) police members attended the location identified by Robertson. Police then made various enquiries with persons in the vicinity of House 511. Constable Eberl made his way to the front open doorway of House 511 and sighted a male inside the House. He then quickly walked over to Constable Rolfe and informed him that he had sighted a male inside the house.

Rolfe and Eberl then walked back around the front of the house and Rolfe briefly spoke to a female, Leanne Oldfield outside the house.

Rolfe requested permission from her to enter the house but was informed by Oldfield that it was not her house and was told to ask the owner of the house (Margaret)<sup>121</sup>.

Rolfe disregarded this and passed a brief message on the police radio to the other IRT members and Donaldson stating:

*Rolfe: "Me and Adam are just going to clear this red house".*

Instead of waiting for the other IRT members to establish a cordon around this house Constable Eberl, followed by Constable Rolfe, entered the residence where they immediately located a male person within the main living area. When asked his name by Rolfe, the male persons initially gave the name 'Vernon Dickson'. Attempts were then made to positively identify the person using dated images of Kumunjayi Walker contained on Constable Rolfe's iPhone recorded from previous arrest episodes. During these attempts Rolfe pushed the male person against the wall.

After what appears to be Rolfe satisfying himself that Kumunjayi Walker was the person standing before him, Rolfe ordered Kumunjayi Walker to put his hands behind his back. Kumunjayi Walker reacted immediately by removing a pair of scissors from his pocket. A struggle then ensued during which time Kumunjayi Walker stabbed Rolfe once to his left shoulder causing a minor penetrating injury to his collarbone. Rolfe responded by stepping back, removing his Glock 40 Calibre pistol from his holster and, without warning, fired one round into Kumunjayi Walker's back.

At this point in time Kumunjayi Walker was wrestling with Constable Eberl and both fell to the ground. At some time during the struggle Eberl also received a superficial wound and bruising to his upper left arm. His police shirt also was slightly damaged.<sup>122</sup>

Rolfe then moved forward and fired two more rounds into the chest of Kumunjayi Walker at close range while Kumunjayi Walker was on the ground beneath Eberl. Kumunjayi Walker continued to struggle for a brief period. He was then handcuffed after the scissors were removed from his right hand. During this time Rolfe stated to Eberl;

*'He was stabbing me, he was stabbing me, it's all good, he's got scissors in his hand, he was stabbing me, he was stabbing you...he's got scissors right here, he's got scissors right here...let go of the scissors...'*

The entire incident, including audio, was captured on the body worn video of the involved members<sup>123</sup>. The first shot was fired at 7.22.01 p.m. The second at 7.22.03 p.m. and the third at 7.22.04 p.m. At no time did Constable Rolfe issue a standard warning to Kumunjayi Walker prior to shooting him. The wounds sustained by Kumunjayi Walker were soon to become fatal.

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<sup>121</sup> This conversation is recorded on BWV, it is difficult to hear the exact conversation or whether tactic consent is given or declined for police to enter the house.

<sup>122</sup> Report of AFP Textile Expert, Timothy Simpson, 'Small hole measuring 2mm in diameter, and had associated upwards and downwards laddering. This damage had features indicative of puncture type damage with associated laddering that could have been caused by a pointed object with a blunt tip used in a stabbing or thrusting action with subsequent stretching or distortion of the fabric surrounding the puncture area'. P.4 – Folder 51 Folio 151

<sup>123</sup> Eberl's BWV camera dislodged from his uniform during the struggle with Walker but continued to record.

## Comments & Considerations

The comments in relation to the attendance at house 511, are the same as those provided above in relation to the attendance at house 577.

However, a compounding factor in relation the actions at House 511 is the sighting of the unidentified male person, who could possibly have been and subsequently turned out to be Kumunjayi Walker. The failure to consider any elements of the 10 safety principles and ICENCIRE resulted in the IRT members choosing to enter the premises and confront the person.

It is apparent that the IRT members had made their own decision to actively locate Kumunjayi Walker, and to enter house 511, choosing options that were more likely to result in the use of force, than the options of the plan that were put in to place to minimise the requirement to use force.

### Considerations

No considerations are provided. It is envisaged that this issue is one that will a key part of the criminal proceedings, and that those proceedings may provide answers as to the members motivations and rationale for taking this course of action.

## Immediate Actions at the Scene

Kumunjayi Walker was quickly handcuffed and evacuated from the scene by the IRT members and placed in the rear of the Police Vehicle. Within minutes of Kumunjayi Walker being shot IRT member, Constable Kirstenfeldt, attempted to notify Sergeant Frost of the occurrence by mobile phone<sup>124</sup>.

Sergeant Frost, Senior Constable Hand, and Constable Alefaio were still at the Yuendumu Police Station when they heard a transmission over the police radio '*shots fired, shots fired*'.

The IRT members were contacted by police radio and initially advised Sergeant Frost that they were intended to convey Kumunjayi Walker to the Yuendumu Health Clinic. Sergeant Frost reminded them that the clinic had been closed and directed them to return to the Yuendumu Police Station. They then immediately drove to the police compound. Kumunjayi Walker initially remained conscious, and members endeavoured to treat his wounds as best as possible.

The Health staff from Yuelamu were contacted for assistance and the Royal Flying Doctor Air Service were put on notice to undertake an urgent medical evacuation from Yuendumu.

The internal injuries suffered by Kumunjayi Walker were severe and Police attempted to control bleeding as best they could with the limited first aid equipment available to them. Once he ceased breathing Police commenced CPR and applied a defibrillator with Kumunjayi Walker succumbing to his injuries soon after.

<sup>124</sup> This was captured on BWV but neither Kirstenfeldt nor Frost can recall making/receiving a phone call at the time.

Efforts at resuscitation ceased at 2036 hours once Rolfe himself declared Kumanjayi Walker deceased. On arrival at Yuendumu, the Yuelamu Health Staff examined Kumanjayi Walker then formally declared him deceased at 2109 hours<sup>125</sup>.

The actions of Police over this time at Yuendumu Police Station, including their efforts to resuscitate Kumanjayi Walker, were recorded on BWV.

An estimated 200 community members gathered around outside the Yuendumu Police Station after the shooting. The Police Station had been locked and was not open to members of the public at this time. The Yuendumu ACPO, Derek Williams, remained outside the Police Station and attempted to control a volatile situation with community residents obviously upset with what had occurred.

The IRT members and the DOU member remained inside the Police Station together with Yuendumu members until such time as Police re-enforcements arrived from Alice Springs and later the next morning, Territory Response Group (TRG) members from Darwin. The front double glass entrance door to the Station remained locked.<sup>126</sup>

By this time there were 8 police officers inside Yuendumu Police Station;

Sergeant Julie Frost (OIC)

Senior Constable Christopher Hand (Alice Springs relief member)

Constable Felix Alefaio (Nyrripi relief member)

Constable First Class Anthony Hawkings, IRT Alice Springs

Constable First Class Anthony Eberl, IRT Springs

Constable Zachary Rolfe, IRT Alice Springs

Constable James Kirstenfeldt, IRT Alice Springs

Senior Constable Adam Donaldson, Dog Operations Unit, Alice Springs

The Yuendumu Police Station remained locked and not accessible to the public.

The Senior Yuendumu Aboriginal Community Police Officer, Derek Williams, who had been attending the funeral, came to the front of the Police Station with family but elected to remain outside the Police Station and attempt to placate the gathering crowd.

Williams and Frost were able to communicate covertly by mobile phone with Williams electing to remain by choice outside the Police Station.

Establishing a crime scene at the scene of the shooting (House 511) was not considered at this time due to safety concerns of all police members at Yuendumu.

Yuelamu Health Clinic members, Lorraine Walcott and Heather Zanker were notified of the shooting at 7.25 p.m.

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<sup>125</sup> Police members at Yuendumu deemed Walker to be deceased at 2036 hours prior to Yuelamu Health Staff arriving at Yuendumu. Refer Transcript of BWV Eberl – Folder 2 Folio 10

<sup>126</sup> The glass entrance doors were covered from inside the Station to prevent anyone from outside looking into the Station. The lights inside the Station remained on but, to those congregating outside, appeared as if they had been turned off.

Kumunjayi Walker was removed from the rear of the Police vehicle and then carried into the Police Station cells with IRT members then attempting to control Kumunjayi Walker's bleeding.

Sergeant Frost then contacted her Divisional Superintendent, Jody Nobbs and directed Senior Constable Hand to commence a 'running sheet' at Yuendumu. Superintendent Nobbs then contacted Acting Assistant Commissioner Travis Wurst.

At 8.12 p.m. Kumunjayi Walker stopped breathing and CPR was commenced at Yuendumu Police Station.

At 8.15 p.m. Superintendent Nobbs attended the Alice Springs Police Station and assumed the responsibility of Incident Controller. Decisions made by him were recorded on WebEOC.

At 8.36 p.m. police efforts at resuscitation on Kumunjayi Walker ceased. Yuelamu health staff arrived at Yuendumu Police Station at 9.08 p.m. and certified Kumunjayi Walker as deceased.

A contingent of Alice Springs members were dispatched by aircraft to Yuendumu with a further contingent of Tactical Response Group members flown to Yuendumu from Darwin.

A roadblock was established at the Stuart Highway/Tanami Highway intersection in order to prevent alcohol from entering the Yuendumu Community.

The Yuendumu members and the IRT and DOU members continued to remain inside the Yuendumu Police Station during this time. Aboriginal Community Police Officer (ACPO), Derek Williams, remained outside the front of the Yuendumu Police Station, demonstrating enormous personal courage, by continuing to make valiant efforts to appease the estimated 200 community members who had gathered at the front of the Police Station seeking an update on the shooting. Throughout this time, he continued his communication with Sergeant Frost via mobile telephone.

During the assembly at the front of the Police Station some community members began to throw rocks on the roof of the Police Station. The situation outside the Police Station remained quite volatile to the extent that at one stage the police members inside the Yuendumu Police Station were given the order to evacuate by Superintendent Nobbs.

They then assembled in their vehicles inside the police compound, placing the body of Kumunjayi Walker, in the rear of one of the police vans, before the decision to evacuate was overturned by Acting Deputy Commissioner Beer. Despite being directed to leave ACPO Williams refused to consider leaving the community and remained at the front of the Police Station.

## Comments & Considerations

The information contained in the preceding paragraphs details the actions of Kumunjayi Walker, Rekeisha Robertson, and police officers from Yuendumu and Alice Springs immediately after the moment Kumunjayi Walker was shot.

The medical assistance and treatment provided to Kumunjayi Walker is addressed in a separate area of this report.

There are no comments in relation to the actions taken, given the dynamic situation the officers found themselves in.

There is no doubt the actions of all members at the stations were worthy of some form of recognition, however, the actions of ACPO Derek Williams were outstanding and a true display of personal and professional courage and integrity.

His decision to remain outside of the security of the police station and maintain communication with Sergeant Frost who was inside is a true act of selflessness and bravery.

In considering initial actions immediately after from a systems perspective, in reviewing the information provided, it is evident that this type of incident is unique, and one we hope will not happen again.

The discussion and lessons learnt from decisions around whether to evacuate the police station or not in my view are invaluable and should be used to develop desktop exercises that can be then conducted to assist members in their management and decision making should this situation occur in the future.

### Considerations

NTPFES should use the lessons learned from this incident to develop desktop or discussion exercises with all remote stations on managing this type of incident as an OIC.

## Notification of Next of Kin

Shortly before mid-night Eddie Robertson rang the Police Station seeking an update as to the condition of Kumunjayi Walker. He spoke to Sergeant Frost who notified him that she could not provide him with an update but would do so later.

When the Forward Commander, Sergeant Terry Zhang, arrived from Alice Springs soon after he contacted the Incident Commander (Superintendent Nobbs) seeking advice as to what information he could relay to Robertson. Zhang was advised to inform Robertson that Kumunjayi Walker was still receiving medical treatment when, in fact, he was already deceased. Zhang completed this task stating that the decision to ring Robertson at 1207 a.m. was;

*"...a way of mitigating risk of the Community sort of, not jeopardising the safety of the members in the Station."<sup>127</sup>*

Next of kin (Rekeisha and Eddie Robertson) were not notified of Kumunjayi Walker's death until later that morning. Eddie Robertson was contacted after the arrival of TRG and requested to attend the Station around 4.50 a.m. He was then advised of Kumunjayi Walker's death and requested to formally identify the deceased.

Robertson stated this was not necessary as Kumunjayi Walker's identity was not in question. At 6.44 a.m. Sergeant Frost, Sergeant Zhang and TRG members attended the residence of Rekeisha Robertson and informed her of Kumunjayi Walker's death.

## Comments & Considerations

The comments and considerations in relation to this issue are detailed later in this report under the heading Adherence to previous Coronial or Royal Commission Recommendations.

<sup>127</sup> Statutory Declaration of Sergeant Terry Zhang, P.9 Folder 50 Folio 142

## Injuries to Rolfe and Eberl

Once community hostilities ceased, Constable Zachary Rolfe surrendered his weapon, body worn video camera, utility belt and clothing for forensic examination<sup>128</sup>. During this time, he informed Constable Hawkins of the injury to his left shoulder received during the attempted arrest of Kumanjayi Walker. Constable Hawkins took photographs on his mobile telephone of the injury and of damage to the shirt and under vest of Constable Rolfe.

Eberl did not initially report receiving any injury at the time although he later stated in his second interview<sup>129</sup>.

- WOOD: *Um, did you receive any injuries?*
- EBERL: *Not that I know of, but I would like to have a look at my shirt because I have a scratch here which could have been from the scissors, I don't know.*
- WOOD: *Yeah.*
- EBERL: *But I never – never mentioned it to anyone other than the other day, but um –*

Once the Alice Springs relief members arrived Constable Rolfe was then conveyed back to Alice Springs via police aircraft. He provided his consent to a voluntary 'non-intimate sample kit' (NISK) allowing his injury to be further photographed and he was then treated at Alice Springs Hospital for a minor puncture wound to the region of the left collar bone<sup>130</sup>.

Members of his Alice Springs patrol group were allowed to visit him and speak with him while he was waiting at the hospital. He was not questioned by investigators at this time and allowed to rest with the intention of obtaining an account of events later in the day (Sunday 10 November 2019).

The injuries sustained by Rolfe and Eberl are shown in the images below.



Injury sustained by Rolfe as photographed by Hawkins



Injury reported by Eberl on 13 November 2019

<sup>128</sup> Constable Rolfe had already washed his hands upon return to Yuendumu Police Station as observed on BWV.

<sup>129</sup> Statement of Constable Adam Eberl (2), P.59 Folder 40 Folio 34

<sup>130</sup> The voluntary 'NISK' application stated that the offence under investigation was that of 'manslaughter'. Folder 71 Folio 37

## Comments and Considerations

The injuries to Rolfe were photographed that night, as detailed above. The above injury to Eberl was not reported until some 4 days after the incident.

During the criminal investigation, information was received from a witness that was of a nature to require some form of analysis of information and evidence to at least demonstrate the injuries sustained by Rolfe and Eberl had not been self-inflicted and had occurred at the time.

Photographs and other information relevant to the injuries were sent to Dr Paul Botterill, a practising pathologist at the Queensland Laboratory, Cairns Hospital. On reviewing the materials Dr Botterill provided an opinion that there were no features on the injuries of Rolfe or Eberl that might suggest they were self-inflicted.<sup>131</sup>

**Considerations** – There are no considerations in relation to this issue

## Police Command Actions

### Establishment of a Police Command Structure

At the time of receiving the notification from Superintendent Nobbs, Acting Assistant Commissioner Wurst was attending a social function in Darwin together with other senior Police executives<sup>132</sup>. These Police executives included Acting Commissioner Michael Murphy APM, Acting Deputy Commissioner Michael White APM, Acting Deputy Commissioner Narelle Beer, Commander Tony Fuller APM and Police Media Director, Rob Cross.

After briefing other Police executives Acting Assistant Commissioner Wurst then commenced a planned 'critical incident' response. An initial decision was made to appoint Detective Superintendent Joanne Foley, Southern Crime, Alice Springs, to the position of Senior Investigator in Charge (SIC) with Wurst assuming the position of Police Operations Commander.

The image contained on the following page is a photograph of the Initial management structure and notifications made at the Territory Intelligence and Co-ordination Centre on night of 9/11/2019, detailing positions and officers allocated to those roles:

Police Commander : Acting Assistant Commissioner Travis Wurst

Forward Commander: Acting Commander Jody Nobbs

Investigations: Superintendent Jo Foley (Alice Springs)  
Acting Commander Martin Dole (Darwin)

Logistics: Commander Tony Fuller (Darwin)

Information: Mr Rob Cross (PFES Media Director)

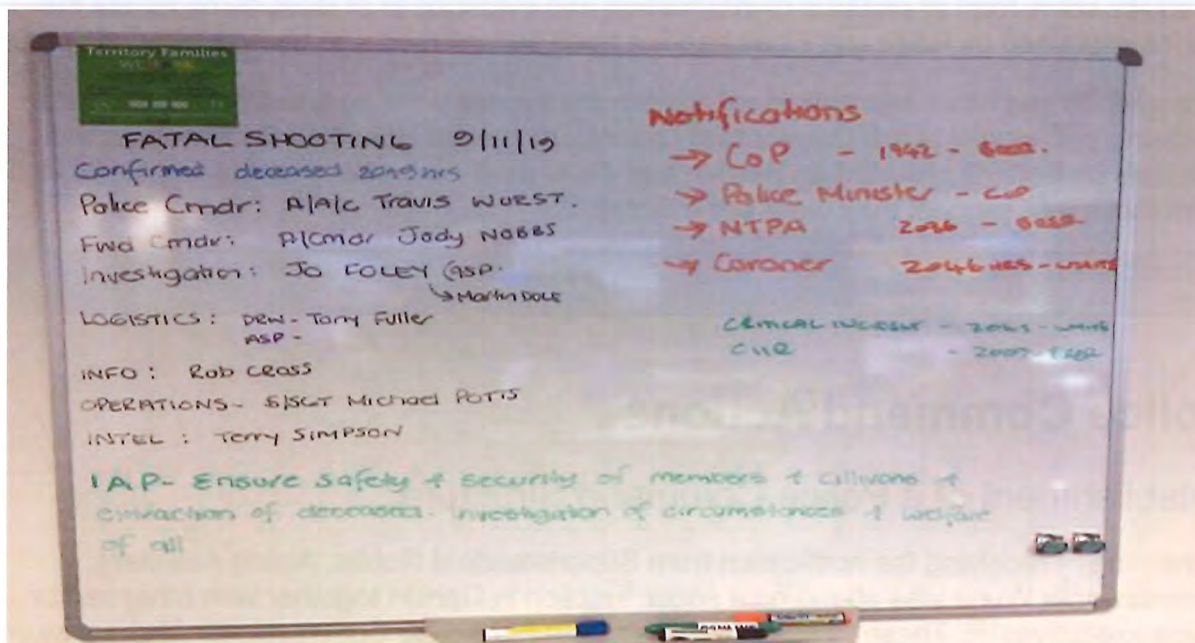
Operations: Senior Sergeant Michael Potts

<sup>131</sup> Refer Report Dr Peter Botterill – Refer Folder 60 Folio 2

<sup>132</sup> Northern Territory Police Legacy Ball.

Intelligence: Sergeant Terry Simpson (Alice Springs)

The Incident Action Plan (IAP) also known as the Commanders Intent was – “ensure safety and security of members and civilians and extraction of deceased. Investigation of circumstances and welfare of all”



## Appointment of Commissioner Officer in Overall Charge and Senior Investigator in Charge and commencement of Investigative Response

Acting Commander Martin Dole was appointed as the Commissioned Officer in overall charge of the investigation subsequently named ‘**Operation Charwell**’<sup>133</sup>.

During the morning of Sunday 10 November 2019, a ‘critical decision’ was made to appoint Detective Acting Superintendent Kirk Pennuto, Crime Division, Darwin, to the position of senior investigator in charge in place of Detective Superintendent Foley.

A Major Crime investigation team and members of the Professional Standards Command were dispatched to Alice Springs to commence a ‘Coronial and Critical Incident’ investigation.

At 7.24 a.m. a ‘crime scene’ was established by Police at House 511, Yuendumu. The crime scene had not been declared earlier due to concerns about the safety and welfare of any police officer assigned to guard the scene. The house had been secured and locked by family overnight and police forensic member examined the scene with the scene being closed by the investigation team at 9.40 p.m. 10 November 2019.<sup>134</sup>

<sup>133</sup> The name ‘Operation Charwell’ was applied to both the Criminal and Coronial Investigations.

<sup>134</sup> Recorded in PROMIS 9129856 as a ‘Critical Decision’ – Case log #88 refers.

The Northern Australia Aboriginal Justice Agency (NAAJA) were notified of Kumanjayi Walker's death by Police at 0808 hours 10 November 2019.<sup>135</sup>

The interview previously arranged with Rolfe was delayed until investigators had the opportunity to view his BWV<sup>136</sup>. Once this occurred the senior investigator postponed the interview, and a 'critical decision' was made to take the BWV footage to the Director of Public Prosecutions (DPP) for an initial (informal) opinion<sup>137</sup>.

This occurred on Monday 11 November 2019 when Detective Acting Superintendent Kirk Pennuto, Commander Martin Dole and Assistant Commissioner Crime and Integrity Nick Antichich met with the Director of the DPP. An indication was received from the Director that a serious offence had occurred and DPP requested a 'short' prosecution brief of evidence to be provided to them by Wednesday 13 November 2019 at which time a considered opinion would be provided to police.

On Tuesday 12 November 2019 investigators attempted to obtain a statement from Rolfe but, after receiving advice from his legal representative, Rolfe formally declined to provide an account beyond what the BWV already revealed. Rolfe made notes of the incident in an official police notebook, but investigators were not aware that it existed.<sup>138</sup> The whereabouts of this notebook remains unknown.

## Appointment of Commissioned Officer in Charge of the Coronial Investigation

On 12 November 2019, with the likely arrest of Rolfe pending, a decision was made to appoint a Commissioned Officer in Charge of the Coronial Investigation<sup>139</sup> separate to the Senior Investigating Officer of the criminal investigation.

This decision was brought about by the somewhat unique circumstances that required two streams of investigation with one reporting to the Coroner in accordance with the Police General Orders – '*Coronial Investigations and Inquests*' and '*Deaths in Custody and Investigation of Serious Incidents and/or Fatal Incidents resulting from Police contact with the Public*'. The other, being the criminal investigation, focussed on the requirements of Police General Orders – '*Major Crime, Major Investigation and Critical Incident Response*' and '*Northern Territory Incident Control System*'.

The decision also supported the position of the Deputy Coroner, provided in a conversation between the Deputy Coroner, Commander Dole, and Superintendent Pennuto, where it was suggested that the investigations should potentially be parallel given the breadth of issues to be considered apart from the direct actions of Rolfe<sup>140</sup>.

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<sup>135</sup> PROMIS 9129856 Case log #43

<sup>136</sup> Rolfe's BWV was uploaded to Evidence.Com at 1229 hours, 10 November 2019 and viewing access was restricted by investigators at 1353 hours. Operation Charwell investigators first viewed the footage in Alice Springs at 1409 hours.

<sup>137</sup> This 'Critical Decision' was not recorded on the Investigation log as required by the Instruction – '*Major Crime, Major Investigation and Critical Incident Response*'

<sup>138</sup> Investigators seized the police notebook of Rolfe when he returned from Yuendumu to Alice Springs. He obtained a new notebook from Alice Springs Police Station on 10 November 2019 and he then recorded notes of the incident in this notebook. Images of these notes are present on and were obtained from Rolfe's Mobile Phone Folder 49 Folio 138

<sup>139</sup> Superintendent Scott Pollock was initially nominated to fill this role on 12 November 2019 with Commander Proctor later officially delegated the role on 10 August 2020.

<sup>140</sup> Refer Page 153 – Diary Notes – A/Supt Kirk Pennuto – Folio 48 Folder 106

## Advice from DPP and Arrest of Zachary Rolfe

On Wednesday 13 November 2019, the senior investigator provided the DPP with a prosecution brief and approval was received to proceed with a charge of 'murder' pursuant to s156 *Criminal Code Act* 1983 [NT].

Zachary Rolfe was arrested by the senior investigator at 1705 hours Wednesday 13 November 2019. Bail was refused by Police, but conditional bail was granted by the on call Local Court Judge. Rolfe was immediately served with a notice suspending him from further duty as a Police Officer while remaining on full pay.

A committal hearing was held at Alice Springs Local Court between 1 – 4 September 2020 before Judge John Birch. On 25 September 2020 Rolfe's defence team made a 'no case to answer' submission. On 26 October 2020 Judge Birch committed Zachary Rolfe to stand trial on the charge of Murder.

During the course of this investigation, concerns were raised in relation to the circumstances surrounding the relocation of Rolfe to Darwin and his subsequent arrest. The inference drawn, that the direction for Rolfe to relocate from Alice Springs to Darwin was to facilitate his arrest and not for welfare or security concerns.

On 12 November 2019, an Investigation Management Committee (IMC) meeting was held at the NAB Building at 8.48 a.m. Present at the meeting were A/Deputy Commissioner White, Assistant Commissioner Anticich, A/Commander Dole, A/Commander Tonkin, A/Supt Pennuto and Senior Sergeant Malogorski.

The first issue the committee discussed was the advice that posts on Facebook and social media had identified Rolfe as the officer who had shot Kumanjayi Walker, and the location of Rolfe's residence had also been disclosed.

The meeting discussed several issues relating to the impact the disclosure would have on the welfare and safety of Rolfe, the investigation, and more broadly policing in Alice Springs, especially if the advice to be provided by the DPP recommended that charges be laid against Rolfe.

Pennuto noted in his diary that "White / Anticich liaising at exec level re potential for relocation by way of consent". Pennuto goes on to note, "Relocation is welfare based, however some will see it as an underhanded exercise<sup>141</sup>."

The committee also discussed their position if Rolfe wished to travel to his former home in the ACT, rather than to Darwin and whether there was a basis to arrest Rolfe in the absence of the DPP assessment. The committee consensus appeared to be that if Rolfe was to be arrested it should occur in the Northern Territory as this would remove the requirement for extradition, however the committee did not want any arrest / charge to occur prematurely.

In the statement provided by Deputy Commissioner Michael Murphy he states that on the 12<sup>th</sup> of November he received information (which was later formalised in a threat assessment) that the residence of Zach Rolfe had been identified and there was a level of unconfirmed threats that would compromise the safety of Rolfe or any member of his family.

With this information, Deputy Commissioner Murphy made the decision to transfer Rolfe to Darwin, a location with a greater level of security.

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<sup>141</sup> Refer Page 153 – Diary Notes – A/Supt Kirk Pennuto – Folio 48 Folder 106

This decision was communicated to Assistant Commissioner Beer to action and coordinate. Deputy Commissioner Murphy goes on to advise that his decision was not influenced by any officer involved in the investigation team, that he had not previously been briefed on any of the decisions or views of the investigation team.

On the afternoon of the 13 of November he was informed by AC Anticich that at a meeting between the investigation team and the DPP, the decision had been made to arrest Rolfe immediately and charge with Murder. The role of the IRT in the Death of Kumanjayi Walker and that this would occur the afternoon of the 13<sup>th</sup>.

In a statement provided by AC Anticich he advises the following in relation to the decision to move Rolfe from Alice Springs to Darwin:

*The criminal investigation team had no involvement in the decision to move Rolfe from Alice Springs to Darwin. I can recall a specific directive not to be involved in any such decision. That action I believe was a combination of the officer's intent and quite possibly that of the organisation in relation to his security and personal choice. My recollection is on the day Rolfe flew up from Alice Springs, we were advised by the DPP that a charge of murder was appropriate. We were made aware of Rolfe's intent to fly to Canberra the next day. The decision was made to arrest him while he was in this jurisdiction, while he was here like any other person suspected of murder. I believe to have allowed him to leave the Territory knowing what he did, smacked of him being dealt with differently as he was a police officer.<sup>142</sup>*

## Comments and Considerations

From the information reviewed there it is clear that the Investigation Management Committee meeting held on the morning of 12 November, had discussions around the impact of the Facebook and social media posts, discussions which included options in relation to the arrest of Rolfe, should the advice they were waiting for from the DPP recommend that Rolfe be charged with criminal offences.

It is also clear that there were discussions at a senior executive level in relation to the relocation of Rolfe for welfare purposes, which also then raised the discussion of the potential implications of extradition if the relocation was not to a location in the Northern Territory.

Ultimately, the motivation for the decision by Deputy Commissioner Murphy to relocate Rolfe to Darwin was on welfare grounds and not to facilitate his arrest.

Unfortunately, as predicted by Pennuto, this was seen by some as an underhanded exercise to facilitate the arrest in Darwin.

### Considerations

There are no considerations in relation to this issue

<sup>142</sup> Refer Statement AC Anticich : Folder 32 Folio 4

## Incident Response Team – Alice Springs

### Background

The operations of the Alice Springs Immediate Response Team are prescribed in a local instruction (Standard Operating Procedure) (SOP)<sup>143</sup>. These SOP's were formulated in 2017 to upgrade the initial response capabilities and enhance the skills of select general duty members serving in the Southern Region.

Prior to 2017 the Alice Springs Police relied on a 'Cordon and Containment' team (ASPCCT). The leader of this team, Alice Springs Sergeant Lee Bauwens, sought to enhance the skills and capability of the Cordon and Containment team and in 2017 the IRT SOP was ratified, subject to conditions, by the then Deputy Commissioner, Grant Nicholls. It was noted at the time;

*"The ASPCCT are not part of the validated and accredited Australia New Zealand Counter Terrorism Committee (ANZCTC PTG). Their deployments should not be governed by the TRG on-call Tactical Commander. The Tactical Commander is a position designated within the PTG and can only offer advice on what is essentially a local-level capability. For all planned significant high risk incidents, and unplanned high risk incidents that become protracted, the ASPCCT are not the appropriate force to resolve a situation that is significant-high risk".*

In 2017 the naming convention of the ASPCCT was changed to better reflect the nature of the duties the ASPCCT were expected to perform – hence the title 'Immediate Response Team' (IRT).

The IRT members are comprised of general duty police officers who volunteer 'as required' on a part time basis to form a contingent of members capable of responding to critical incidents in the absence of the immediate availability of Tactical Response Group (TRG) members.

The IRT members are recruited from the pool of Alice Springs General Duties members with a preference for members with military experience. A cadre of 15 – 16 trained members is preferred.

Training (usually firearms) is provided to selected and available IRT members one day a month. With the type of skill set required preference for selection for IRT duties is heavily weighted in favour of ex-military members. Yearly training assessments of IRT were to be undertaken by TRG members.

Selection for the IRT is conducted at a local level in Alice Springs. A selection panel, chaired by the Commander in Alice Springs, usually includes the Alice Springs Divisional Superintendent, Officer-In-Charge of the IRT and a Northern Territory Police Association (NTPA) local delegate.

### Role of the IRT

The primary role of the IRT is clearly described in their SOP which states<sup>144</sup>:

*The Alice Springs Immediate Response Team (IRT) has been established in recognition of the need for Alice Springs and Southern Command to have a capability that is able to respond to critical incidents where accepted tactics of cordon, contain and negotiate have failed or been*

<sup>143</sup> Refer IRT SOP, Folder 12 Folio 34

<sup>144</sup> Refer Folder 12, Folio 34 IRT SOP

*unsuccessful, the Territory Response Group are not able to respond within a suitable time frame to resolve an incident and the nature of the incident is such that an urgent police response is required to prevent loss of life or serious injury.*

*The IRT is a part time capability comprised of officers who have been provided skills enhancement training above that of a front-line general duties officer to enable them to respond to critical incidents. The IRT are not trained to the level of a Police Tactical Group (PTG) nor are they expected to fulfil this role, they will however when circumstances (as highlighted above) dictate be required to utilize the skills and training they have been provided<sup>145</sup>.*

The SOP's also provide for the IRT to be available to assist other units in general support role with

- *Expedient search warrant entry*
- *Assistance in the arrest of violent offenders*
- *Assistance in the arrest of persons evading police or who have escaped lawful custody*
- *Assistance to Southern Command in targeted operations*
- *Assistance in the arrest of armed offenders*
- *Re-establishing order following civil unrest*
- *Southern Command support at large scale community unrest.*
- *Assistance with Search and Rescue Operations*

## IRT Deployments

Since 2017 there have been 39 deployments of IRT members<sup>146</sup> comprising of:

- 3 search and rescue episodes
- 6 responses to community disturbances/riots
- 9 targeted arrests
- 21 others matters (general – rock throwing episodes/surveillance requirements/close personal protection)

Of note is that a team leader was appointed on 9 of those 39 occasions (either Sergeant Bauwens or Constable 1/C Vivian)<sup>147</sup>. It is also noted that the type of operations to which the IRT have been deployed appears to have expanded considerably from the original role detailed in the SOP and has led to what can only be described as 'mission creep'.<sup>148</sup>

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<sup>145</sup> Refer Folder 12, Folio 34 IRT SOP

<sup>146</sup> (ROLFE is recorded on 4 of the CNE's in 2019 and 2 in 2018 – one of which was stood down prior to deployment)

<sup>147</sup> PROMIS 8905514 (2018) & 8854742 (2019) refer.

<sup>148</sup> 'Mission Creep' – 'The gradual addition of new tasks or activities to a project so that the original purpose or idea begins to be lost' (Definition – Cambridge Business English Dictionary)

## Command & Control of IRT

The IRT is maintained as a part-time capability and while there is mention of an OIC, 2OIC and Team Leaders in the SOP there is no requirement for these positions to be maintained in the absence of the IRT member/s who are usually nominated to one or all of these 'part-time' positions. At the time of Kumanjaya Walker's death, the IRT OIC (Sergeant Lee Bauwens) and IRT 2OIC (Cameron Vivian) were on leave and no stand-in replacement had been allocated the role.

Any IRT call-out does not stipulate a mandatory requirement for the nomination of a suitably experienced team leader. Ordinarily the most senior member of the group would assume this responsibility by virtue of seniority of rank.

The IRT are a 'Command Asset' within Alice Springs and therefore the Commander, Alice Springs, must authorise the deployment of the IRT. This is mandated in the IRT SOP. The SOP's are a localised instruction with the local Alice Springs Commander responsible for their content and administration.

## Approval for Deployment of IRT

The accountability for approving the IRT to deploy to critical incidents or in a general support role rest with the Assistant Commissioner Regional and Remote Operations and the Commander Southern Command, respectively.

Approval for IRT deployment to high-risk incidents, must be approved at the Assistant Commissioner level and in accordance with SOP, also requires contact to be made with the Officer in Charge, Territory Response Group.

## Adherence to the Immediate Response Team SOP

Once the IRT SOP was ratified in 2017 it is apparent that strict adherence to the SOP was not maintained in several critical areas.

### Training

The IRT SOP requires all IRT members to undergo a validation training block (conducted over 5 days) each year. This training is conducted by the Tactical Response Group (TRG).<sup>149</sup>

#### 3.1.1 IRT members qualifications

*Each IRT member must requalify in the following every 12 months:*

- Less lethal Shotgun

*Each IRT member must requalify in the following every 6 months:*

- IRT range shoot
- IRT Close Quarter Tactics (CQT) 5 room test

*These skills are considered the basic drills needed to remain proficient in the core functions of the IRT.*

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<sup>149</sup> Refer Folder 12, Folio 34 IRT SOP

*All training carried out is to be directed towards achieving the Performance Objectives applicable to the IRT. To achieve this, it is intended to formalise the recording of all training, results, and faults, with the view of improving operational efficiency of members of the IRT.*

*TRG will provide an annual validation of equipment, training and tactics, and IRT members will be tested and evaluated to ensure a proficient standard is maintained. IRT members must pass the annual assessment to remain on the unit.*

The IRT SOP states that OIC of the IRT is responsible for ensuring training standards and records are maintained as required. A review of the training records for IRT members as recorded in the SPECTR system indicates that training records for IRT member have been poorly recorded and maintained.

A review of the training records of the IRT members as recorded in the SPECTR system indicates that the annual training and validation requirement was conducted once in April 2018 and not at all in 2019.<sup>150</sup> If this is the case then no IRT member in Alice Springs would have been qualified under the requirements of SOP and therefore all would have been unavailable for selection for IRT duties at the time when the IRT were deployed to Yuendumu in November 2019.

A review of training records in the SPECTR system specifically relating to Constable Rolfe show that he had only 5 training attendance dates recorded from 2017 - 2019 when he was rostered to attend IRT training every 5 weeks. According to the SPECTR records Rolfe did complete an 'IRT Qualification shoot' on 13 July 2019, however TRG did not conduct that validation/assessment<sup>151</sup>.

## Behaviour / Performance

The IRT SOP contains several stipulations in relation to the behaviour and performance of IRT members, as detailed below<sup>152</sup>

*It is expected that IRT members display a high standard of professionalism and behaviour fitting their role*

*Members who are subject of a performance improvement plan in their primary role will be stood down from IRT for the duration of the plan, until they have demonstrated they can perform to an acceptable standard.*

*Members who are the subject of disciplinary action will be stood down during the investigation or subsequent penalty period at the discretion of the Commander Southern Command, and in consultation with the OIC IRT and Alice Springs Divisional Superintendent*

At the time of being called out and deployed to Yuendumu on 9 November 2019, Constable Zachary Rolfe had several internal matters (complaints against police) under investigation<sup>153</sup>.

<sup>150</sup> TRG conducted annual training on 8 IRT members in Alice Springs 23 – 27 April 2018. Folder 71 Folio 47

<sup>151</sup> No request was made to TRG in 2019 for annual validation training to occur – Email – TRG A/Superintendent James Gray-Spence to Operation Charwell member (Kingston) dated 24/9/2020, Folder 71 Folio 47

<sup>152</sup> Refer Folder 12, Folio 34 IRT SOP

<sup>153</sup> PSC Career Review dated 15 April 2020 – Rolfe had 2 Complaint Against Police (CAP) and 1 Internal Investigation matter on 9 November 2019, Folder 22 Folio 1

## Comments and Considerations

*NOTE - Comments and considerations in relation to the actions and deployment of the IRT on 9 November are detailed in preceding paragraphs of this report detailing the circumstances surrounding the death of Kumunjai Walker.*

The deployment of the IRT had a critical role in the death of Kumunjai Walker. On examining the response to this incident and more broadly the policies, procedures, management, deployment, and operational practices of the IRT the coronial investigation team has identified several critical system failures.

The SOP developed in 2017 and then approved by Deputy Commissioner Nicholls, clearly states the primary and secondary roles of the IRT, and in addition details requirements in relation to training, mandatory independent training evaluations to be undertaken by the Territory Response Group, and deployment of members who are subject to disciplinary matters.

Since its inception in 2017, the primary role for which the IRT was established has become blurred. Unfortunately, there is no single systemic failure that can be attributed to this situation. Staffing changes, management changes, differing perspectives on operational priority and deployment and communication breakdown have all contributed to a situation where the primary role of the IRT has expanded and the governance requirements under the SOP have lapsed.

As previously indicated in this report the operations of the IRT have been suspended. A review is currently underway which will incorporate the systemic issues highlighted above and focus on the effectiveness of the policy, clarity of the role of IRT and its deployment, compliance with training requirements, and its command and control.

Assistant Commissioner Dr Narelle Beer authored an extremely critical report on the IRT SOP's, post shooting, to Deputy Commissioner Michael Murphy in her memorandum (dated 27 November 2019)<sup>154</sup>.

*'There is no overarching policy that establishes the functionality, objectives or scope of the IRT...Based on the lack of apparent governance, consultation and promulgation of these procedures (and in the absence of any specialist skills, abilities or expertise by the author – Williams) I cannot evidence base appropriate rigour around the development of these SOP's.*

The operations of the IRT were suspended by the Northern Territory Police following the death of Kumunjai Walker and are now subject to review.

### Considerations

There are no considerations made in relation to this issue. A review of the IRT has been undertaken by Superintendent Shaun Gill, it is expected that this review will make recommendations to address the issues identified during the coronial investigation.

<sup>154</sup> Refer Folder 71 Folio 34 Review of IRT SOPS – AC BEER

## Care and Medical Treatment of Kumunjayi Walker Post Shooting

As highlighted earlier in this report, immediately after Kumunjayi Walker was shot by police he was quickly handcuffed and evacuated from the scene by the IRT members and placed in the rear of the Police Vehicle.

With no Yuendumu Health clinic staff available the IRT members were directed to return to Yuendumu Police Station by Sergeant Frost. Kumunjayi Walker initially remained conscious, and members endeavoured to treat his wounds as best as possible.

The police response to the first aid efforts applied to Kumunjayi Walker after he was shot have been reviewed by Professor Michael C Reade AM. Professor Reade is a medical practitioner who holds general and speciality registration in the clinical specialities of anaesthetics and intensive care medicine.

He has been the Director of Clinical Services for the Australian Regular Army and holds formal qualifications in prehospital care of ballistic casualties. He is one of Australia's most prominent medical authorities in the treatment of major trauma, including gunshot injuries<sup>155</sup>.

The internal injuries suffered by Kumunjayi Walker were severe and Police attempted to control bleeding as best they could with the limited first aid equipment available to them. While still conscious and being treated by the attending police officers, Kumunjayi Walker complained on several occasions of being short of breath. Kirstenfeldt, who had previous clinical training with the Army, believed that Kumunjayi Walker was suffering from a haemopneumothorax.

Kirstenfeldt discussed the option of him conducting a procedure to 'punch' the haemopneumothorax, however, option was not pursued due an absence of appropriate equipment.

Once Kumunjayi Walker ceased breathing Police commenced CPR and applied a defibrillator. Senior Constable Hand also made a call to the St. Johns operator in the Joint Emergency Services Call Centre (JESCC). The St. Johns operator (Lana Harman) offered advice around performing CPR, Expired Air Resuscitation (EAR) and using the Defibrillator (AED)

In hindsight it may have been prudent for this call to have been made sooner as it could have assisted with identifying and assessing the haemopneumothorax injury but ultimately, without specialist medical care and facilities at hand, this would have not prolonged Kumunjayi Walker's life to the extent that such treatment could have been provided.

When the St. Johns operator mentioned EAR to the police officer at Yuendumu the following conversation occurred.

*AMBULANCE: Okay, now I'm just gonna tell you to, how to give mouth to mouth just to make sure we're doing it correctly, so if someone there can place their hand on his forehead, their other hand on under his neck and then tilt the head back.*

*HAWKINGS: Yeah, ah this point we are not gonna do mouth to mouth. Anybody gonna do mouth to mouth?*

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<sup>155</sup> Refer Folder 60 Folio 4 Report by Dr Michael Reade

*POLICE OFFICER (HAWKINGS): No.*

*HAWKINGS: Just ah due to the fact that he's ah one of our Prisoners and –*

*AMBULANCE: Okay, yeah, no that's fine.*

*HAWKINGS: – health and safety reasons for us, we're not going to be doing mouth to mouth.*

*AMBULANCE: Yeah, okay, no, that's fine.*

*HAWKINGS: We don't have a (inaudible).*

*AMBULANCE: That's completely fine. Alright now –*

*HAWKINGS: We're waiting, we're waiting our medical, our medical staff to get here*

Despite speaking with the St. Johns operator at around 8.31 p.m. and being told to call St. Johns back if efforts at CPR were to cease, resuscitation ceased at 2036 hours (some 24 minutes and 14 seconds after they were commenced). Constable Zachary Rolfe and the IRT members made the decision themselves. This decision was made at 8.36 p.m. No call was made back to the St. Johns operator as requested.

The decision to cease CPR is a contentious one as guidelines produced by the Australian Resuscitation Council state that CPR should only cease when:

- *The patient is responsive and their breathing normal*
- *Qualified help arrives*
- *It is impossible to continue through exhaustion*
- *An authorised person pronounces death (ONLY a medical Doctor/fully qualified Paramedic can announce death and stop CPR)"*

In his report on the review of medical treatment, Professor Reade observed the following:

*Notwithstanding this advice, Reference R recommends that in cases of cardiac arrest due to trauma, Basic Life Support should continue for only 10 minutes after all reversible causes of the cardiac arrest have been addressed. In this situation, it was not possible to address any of the reversible causes of the cardiac arrest and as a consequence, I believe it was reasonable, and in accordance with this guideline, that resuscitation be ceased after 10 minutes. As noted above, I calculate that CPR was in fact performed for 24 minutes and 14 seconds<sup>156</sup>.*

At the time of the incident all IRT members at Yuendumu held current Emergency Care Management Program (First Aid) qualifications. Given the additional level of first aid training Kirstenfeldt claimed to have received during his military career and in considering the injuries suffered by Kumunjayi Walker, EAR could have been provided. Appropriate mouth to mouth kits were in the police vehicles at Yuendumu and available to the members if required. However, the IRT members had (and had expressed) concerns for their own health and safety and focussed on obtaining a defibrillator and applying that when required.

The Yuelemu Health staff were able to officially confirm that Kumunjayi Walker was deceased when they arrived at Yuendumu Police Station at 9.08 p.m.

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<sup>156</sup> Refer Statement and Report - Professor Reade, Folder 60 Folio 4

## Comments and Considerations

The medical treatment provided to Kumunjayi Walker immediately after the shooting incident, became the responsibility of the police officers at Yuendumu, due to the withdrawal of Yuendumu Clinic staff earlier that day and the travel time required for the Yuelemu Clinic staff to reach Yuendumu.

As previously mentioned, a detailed and thorough review of the treatment provided to Kumunjayi Walker was undertaken by Professor Michael Reade.

In response to the question as to the survivability of the wounds received by Kumunjayi Walker had the Yuendumu Clinic been open and staffed at the time, Professor Reade provides the following response:

*Had the clinic been open and staffed by its usual complement of Remote Area Nurses, I believe some but not all of the prehospital interventions necessary to prolong Mr Walkers life would have been applied. Whether this would have been sufficient to result in his ultimate survival would have depended on the time taken for an aeromedical retrieval flight to arrive. I note that the first person to disembark the aircraft that landed at Yuendumu does so approximately 6 hours and 1 minute after Mr Walker had been shot. If this was the earliest time that an aircraft could have arrived at Yuendumu, I do not believe that the interventions that could have reasonably be expected to be provided by the clinic staff would have been sufficient to result in his survival.<sup>157</sup>*

In the summary of his report, Professor Reade made the following observations in relation to the treatment provided to Kumunjayi Walker by police officers:

*'In summary, I believe that from the moment that the bullet that caused wound B reached the end of its wound path, in the circumstances present at the time, Mr Walker was going to die regardless of any efforts made by the police officers present.*

*The police officers present rendered first aid largely consistent with their NT Police and, where relevant, Australian Defence Force training. In part, this training and its associated protocols inappropriately prioritised "medical" causes of cardiac arrest, such as myocardial infarction from ischaemic heart disease, that would be treated effectively with an Automated External Defibrillator (AED), and deprioritised causes of cardiac arrest due to trauma, such as maintenance of an open airway, relief of haemopneumothorax, and maintenance of the circulating blood volume with the minimum possible amount of intravenous fluid. This represents an opportunity for improved training in situations when penetrating trauma due to firearms is possible, but it does not reflect on the actions of the police involved at Yuendumu in any way.*

*I observed the treatment provided to Mr Walker by the police officers in Yuendumu to be focussed, attentive, and that it displayed an appropriate sense of urgency and appreciation of the gravity of the situation. I believe the police officers would have rendered similar treatment, with the possible addition of expired air resuscitation and more prolonged resuscitation attempts, neither of which would have altered the outcome, had it been one of their own colleagues that had been shot<sup>158</sup>.*

<sup>157</sup> Refer Statement and Report - Professor Reade, Folder 60 Folio 4

<sup>158</sup> Refer Statement and Report - Professor Reade, Folder 60 Folio 4

As detailed above, the injuries sustained by Kumunjayi Walker were such that survivability was unlikely.

Professor Read was asked the question whether training and equipment of NT Police officers could be improved so that in the event of a similar incident a different outcome could be achieved.

In his response, Professor Reade made reference to the Australian Defence Force model of a 'combat first aider', and the application of this concept to policing. The Northern Territory Police has already introduced this concept in to the Territory Response Group, given the nature of their operating environment, and the capacity of officers in that area to train, practice and maintain their capabilities.

Given the small number of Death and Serious Injury incidents involving police that occur in the Northern Territory that would require this type of response, it would be difficult in the view of the reporting member to justify the expansion of this model across the entire Northern Territory.

**Considerations:** There are no considerations in relation to this issue

## Adherence to Previous Coronial or Royal Commission Recommendations

The coronial investigation as part of its remit has undertaken a review of the previous Royal Commission and Coronial recommendations, the following identifies those recommendations that are relevant to the death of Kumunjayi Walker and adherence or otherwise by the Northern Territory Police.

### Dragging of persons in custody

Concerns were raised by the family of Kumunjayi Walker in relation to the actions of police immediately after the fatal shooting, in particular the issue of Kumunjayi Walker being dragged to and placed in the rear of the police vehicle.

The Coroner has clearly expressed his disapproval of any form of police dragging a person in custody in previous 'death in custody inquests'.<sup>159</sup> The concerns raised by the family and dragging of Kumunjayi Walker after he had been shot and handcuffed by police again raised the question as to why this practice still continues.

Prior to 31 January 2013, there was no specific instruction or policy that articulated the requirements of Police in relation to the dragging of prisoners in custody. Instructions around the dragging of prisoners were first disseminated by way of gazette notice on 31 January 2013.

This instruction would appear to have been in response to the Coroners findings from the Terence Daniel Briscoe Inquest that were published on 17 September 2012 where the NT Coroner, Mr Greg Cavanagh made recommendation to the NT Police Force:

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<sup>159</sup> Refer to Northern Territory Coronial Inquest into death of Terrence Briscoe (2012) and Cedric Trigger (2010), Folder 62 Folio 2

*'That police be directed that the practise of dragging detainees or prisoners on the ground in the Watch House is unacceptable and should not occur, save for the most exceptional circumstances. Where prisoners are unable or unwilling to walk, they should be assisted to their feet and helped to walk. When this is not possible, more than one officer should assist and carry them wherever that is practicable'.*

After 31 January 2013, the following instruction applied:

### ***Dragging of Persons in Custody***

338 – ***Unless under emergent circumstance***, a person in custody who is unable or unwilling to walk ***shall not be dragged by their limbs*** to move them from place to place. Where a wheelchair is available, it shall be utilised for this purpose. Where a wheelchair is not available, where practicable ***more than one member will assist*** the person to move and in any case alternatives to dragging by the limbs will be utilised.

The most current *Custody and Transport* Instruction now states:

### ***Managing a Person Who is Unable to Walk***

S299 – A person in custody who is unable to walk should be placed in a wheelchair if available. Where a wheelchair is not available members will utilise an appropriate carry technique. There are ***no circumstances*** which justify a person being dragged to move them while in custody.

***Note:*** Serious consideration must be given to any medical conditions impacting the person's ability to walk.

The above paragraph first appeared in this instruction on 20 September 2018 and has remained ever since. It changed the policy of the dragging of prisoners from "*Unless under emergent circumstance*" to "*There are no circumstances*".

By contrast, the NT Police requires officers to complete the Custodial Care online course in the first instance and every 12 months thereafter. This course is compulsory. This course has not been updated to educate members that there are now '*no circumstances*' that justify a person being dragged and still reflects and assesses participants against the superseded policy.

In the case of Kumanjayi Walker members were obviously concerned with the immediate anger of family and community members in proximity and elected to take the action they did in dragging Kumanjayi Walker to the parked Police vehicle, as indicated by Constable Eberl in his statement to investigating officers<sup>160</sup>.

EBERL: *He was – he was um, he was in our care, so I mean normally um, you wouldn't carry a patient or even a prisoner necessarily, you get told you know? Put him in a wheelchair and that sort of stuff.*

WOOD: *Mm-hm.*

EBERL: *But we didn't have that luxury.*

WOOD: *Yep.*

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<sup>160</sup> Refer Adam Eberl Statement 2, Folder 40 Folio 34

EBERL: *And we were in a hurry so –*

## Comments and Considerations

It is evident that policies and procedures relating to the dragging of prisoners were not followed by the IRT members in their dealing with Kumunjayi Walker. The wording of the instruction as detailed above, states that there are no circumstances that justify a person being dragged.

As detailed above, in the information provided by Constable Eberl the intention of the policy is acknowledged in his *statement 'normally you wouldn't carry a patient or a prisoner, necessarily, you get told you know, put him in a wheelchair and that sort of stuff.*

In the statements provided by Kirstenfeldt and Eberl they both refer to the actions of community members, concerns for their safety and rendering assistance to Kumunjayi Walker, in relation to the decision to getting away from house 511. It does not appear that consideration was given by the members to moving the police vehicle closer to remove the need to drag Kumunjayi Walker, or that this could have been a possibility in the circumstances.

Policies and Procedures relating to the dragging of prisoners were not followed. The policy is clear in its statement that there are no circumstances that justify a person being dragged. The situation at Yuendumu however was not a normal situation, in fact the situation was an extremely complex one. Police had shot Kumunjayi Walker, who had sustained significant injuries. The health staff at Yuendumu had left the community, removing the option of an ambulance attending the scene to attend to transport Kumunjayi Walker. Compounding these factors were the reactions of community members to the actions of police.

It is regretful that in addition to realising Kumunjayi Walker had been shot by police, community and family members observed him being 'dragged' to the police vehicle. Given the volatile situation that was developing, the injuries to Kumunjayi Walker, and the need to render assistance it is difficult to see what other options were available to the officers.

### Considerations

There are no considerations in relation to this issue.

## Separation and interviewing of (police) witnesses.

The general order '*Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public*' provides clear guidance and direction on the procedures to be undertaken on report discovery of a Death in Custody or serious injury resulting from police contact with the public.

Paragraph 15 of the General Order advises that:

*The senior member will ensure that the scene is secured and only essential personnel involved in the preservation of life are allowed access. The senior member will also ensure that all witnesses to the incident are identified and **that communication between such witnesses is prevented, and arrangements are made for their immediate segregation, particularly any police members directly involved in the incident***

The general order goes on to advise, under the heading “*Member’s Responsibilities – Post Incident*”, that:

*‘All members directly involved in a death in custody or serious incident will be interviewed before the completion of their shift where possible. The interview of members directly involved in the incident will take the form of an audio and video record of interview. If not practicable to video, the interview must be audio-recorded’.*

And

*All members will be given the opportunity to seek legal advice. Where legal advice is sought by a member and it is not possible to obtain that advice before the end of a members shift, the member should be interviewed as soon as practicable thereafter. Where this is the case, members involved in the incident must remain segregated and are to be instructed not to confer with or consult with any other member involved in the investigation’.*

The circumstances that occurred immediately after the shooting presented challenges in segregating the officers involved in the incident from one another, particularly while the officers were attempting to provide medical assistance to Kumanjayi Walker in an effort to save his life.

A review of statements and other documentation obtained as part of the coronial investigation, reveals that on a number of occasions, considerations were given to the segregation of witnesses.

In the diary notes of Acting Superintendent Pennuto, there is a reference to a phone conversation between Pennuto and Acting Commander Janelle Tonkin (who was the Acting Commander of Police Standards Command) that occurred at 9.25 pm on the evening of 9 November 2019.

During this conversation Tonkin provides an update to Pennuto on information relating the incident at Yuendumu, as part of this update it is noted that<sup>161</sup>:

*“members are now all locked down at station”*

*“capacity to separate witnesses is almost zero”*

*“Firearm has been secure in station armoury”*

*“Tonkin has issued a direction that BWV is a must”*

In the statement of Acting Assistant Commissioner Wurst he advises he made and reaffirmed several decisions, one of which was:

*The two (2) IRT staff involved in the incident were to be extracted as a priority for their safety. Critical Incident Response methodology was to be employed to ensure they were separated and quarantined from one another as best as was possible in the circumstances<sup>162</sup>.*

In the statement of Detective Acting Senior Sergeant Leith Phillips, he advises that prior to the departure of the Alice Springs Investigation team to Yuendumu, he provided a briefing to the team and specified the importance of ensuring, as far as possible, that the police officers directly involved were separated until their version of events was obtained (as per the

<sup>161</sup> Refer Diary Notes – Superintendent Kirk Pennuto , Folder 48 Folio 160

<sup>162</sup> Refer Statutory Declaration – Travis Wurst – dated 20/8/2020 – Folder 50 Folio 140

requirements of the general order), that they were to secure all BWV footage from the members involved in the shooting, and that all member versions were to be recorded in audio visual format or at least audio recorded statutory declarations<sup>163</sup>.

On arrival at Yuendumu the Alice Springs Investigators did their best ensure the IRT members and the DOU member were interviewed as soon as practicable in the early hours of Sunday 10 November 2019.

Despite the separation of officers being considered, the review has not been able to locate any evidence or information to indicate that a specific direction was given to the officers involved in the incident to separate and not confer, as required by the General Order.

A review of the initial interviews also reveals that on completion of the interviews no instruction or guidance was provided to members in relation to not conferring or consulting with any other members involved in the investigation, again as required by the General Order.

Unlike his fellow IRT members, however, investigators did not subject Constable Rolfe to an immediate 'field' interview upon his return to Alice Springs. Instead, he was allowed to communicate with the NTPA legal representative and receive medical treatment. This was permissible under the advice detailed above and contained in the '*Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public*'.

Constable Rolfe was then visited at the Alice Springs Hospital while he waited as an outpatient by members of his patrol group. Despite an investigator being present there was no attempt to stop this from occurring.

He was also in contact with friends and family who offered support. Further, the same investigator was told by his superior, Detective Acting Senior Sergeant Leith Phillips, to ensure Rolfe did not return to the Alice Springs Police Station that night/morning.

Rolfe, in company with NTPA representatives, then attended Alice Springs Police Station, entering the Station before then communicating with D/A/S/Sgt Phillips<sup>164</sup>.

Phillips advised Rolfe to then go home and rest and that a statement would be obtained from him later the same day (Sunday 10 November 2019). Rolfe then left the station before returning to the Station later that (Sunday) morning.

He then communicated with other police officers before leaving the Station. He did not make a statement at that time while investigators deliberated over the timing of his statement.

Upon viewing the BWV of Rolfe at 1501 hours, Sunday 10 November 2019, the Senior Investigator, Acting Superintendent Pennuto, held concerns over the actions of Rolfe. Any intended interview with Rolfe was then postponed while investigators decided whether the interview with Rolfe would then be held under caution instead of a voluntary statement.

The interview with Rolfe was further delayed until the Assistant Commissioner, Crime, and Integrity<sup>165</sup>, the Commander Crime<sup>166</sup> and Pennuto liaised with the Director of the D.P.P. on

<sup>163</sup> Refer Statutory Declaration – Detective A/Senior Sergeant Leith Phillips statement 1 – Folder 48 Folio 107

<sup>164</sup> Rolfe had his personal vehicle parked at the Alice Springs Police Station.

<sup>165</sup> Assistant Commissioner Nick Anticich APM

<sup>166</sup> Commander Martin Dole

Monday 11 November 2019. Advice was then provided by the D.P.P. that Rolfe should be interviewed under caution.

On Monday evening a social gathering occurred at Rolfe's residence. The gathering included members of Rolfe's patrol group, police friends and fellow IRT members who had been at Yuendumu with Rolfe when the shooting occurred.

On Tuesday 12 November 2019 Rolfe, in company with his legal representative, read a statement to investigators in Alice Springs indicating he would not be discussing the matter further.

Rolfe was not directed to answer questions in accordance with 'directed interview' provisions of Section 79A, *Police Administration Act 1978* 'Member to answer questions or give information in relation to breach of discipline'.

Assistant Commissioner Anticich summarised the reasons why a directed interview, or any other form of coerced interview, did not take place as follows.

*'Based on early assessment, the actions of Zac Rolfe (Rolfe) were questionable and possibly criminal. It was decided, in accordance with normal practice that the investigation of possible criminal acts would take precedent. Matters concerning discipline or misconduct were not forgotten but rather deferred until the criminal investigation could establish any criminality. A disciplinary interview is compelled, the officer must answer questions put to him or face disciplinary sanction. Nationally we have seen police officers refuse to answer questions in compelled interviews on the basis of incrimination in criminal conduct. This has resulted in the practice of criminal investigations taking primacy, and/or disciplinary matters being considered later or separately, depending on the jurisdiction. Criminal interviews need to occur where the suspect is under no coercion and makes it of their own free will.'*<sup>167</sup>

A directed interview did not occur for the reasons mentioned above by Assistant Commissioner Anticich. A similar sentiment was highlighted by the Northern Territory Coroner in the *Robert Jongmin Inquest* regarding the perils of interviewing a (police) witness too early into an investigation without having sufficient fact to put to the witness<sup>168</sup>.

## Comments and Considerations

When a person dies or is seriously injured after contact with the police, it poses a challenge to public confidence in policing. It is essential that the facts surrounding such incidents are fully and independently investigated in or to preserve and even enhance public confidence.<sup>169</sup>

The guidance provided by the Northern Territory Police General Order *Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public* in relation to the separation of witnesses has been provided to ensure that as soon as possible after an incident has occurred systems are put in place and directions are given to minimise the conferring between witnesses and the contamination of evidence, whether consciously or unconsciously.

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<sup>167</sup> Statement of Assistant Commissioner Nick Anticich, P.2, Para. 8, Folder 32 Folio 4

<sup>168</sup> Northern Territory Coronial Inquest into the death of Robert Jongmin [2007] NTMC 080 – Para. 96 Folder 64 Folio 5

<sup>169</sup> IOPC Statutory guidance to the police force on achieving best evidence in death and serious injury matters, <https://www.policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/statutory-guidance-section-22-guidance.pdf>

Any indication of evidence of conferring has the potential to undermine the integrity of the investigation, any evidence gathered and to damage public confidence in the investigation and the Police Force in general.

As previously stated, the situation at Yuendumu immediately after the shooting was an extremely complex one, and it is acknowledged that the ability to segregate officers directly after the incident would have been difficult if not impossible. It is also noted that, during the incident on several occasions the segregation and separation of involved officers was considered. However, these considerations were either not implemented or were not communicated to the officers involved until the arrival of the investigators from Alice Springs.

A review of interviews with officers immediately after the incident also reveals that none of the officers interviewed were provided with an instruction or direction by the Senior Investigator or the interviewing officers to not socialise, meet with, or discuss the case with any other (police) witness involved in the investigation.

The failure to give these directions unnecessarily exposed the investigation and the Northern Territory Police to potential criticism. A situation that was further compounded by the actions of Rolfe and other officers in attending a social gathering while Constable Rolfe was still yet to be subject to an interview.

Although in subsequent interviews, officers at that social gathering have denied having any conversations about the incident, this cannot be confirmed nor can the possibility that officers may have conferred or discussed the incident.

In regard to the delay in interviewing Constable Rolfe and the issues arising in this case, it was prudent for the Senior Investigator to delay the interview until he at least had time to view Constable Rolfe's BMW.

After that time Constable Rolfe was considered a potential suspect in a homicide and the initial concerns held by the Senior Investigator that an offence may have been committed were later confirmed when he met with the D.P.P.

It would be imprudent to suggest the Senior Investigator erred or did not abide by the General Order *'Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public'* by failing to interview Constable Rolfe at the earliest opportunity. In this regard Constable Rolfe did not receive any preferential treatment.

It is noted that once Rolfe was arrested his bail conditions included not to associate with various critical police witnesses. Police, other than those mentioned in the bail conditions, remained in contact with Rolfe offering support and advice.

In considering recommendations in relation to this issue, the importance of ensuring public confidence and maintaining the integrity of any investigation into a death or serious injury involving police must be recognised as being paramount in any police response.

A fundamental part of this recognition is the requirement of police to ensure robust systems are in place for to prevent the contamination of or perception of contamination of police evidence occurring. This is best achieved by keeping witnesses separate from the moment it is operationally safe to do so, until after they have provided their initial account. This did not occur on this occasion.

## Considerations

NTPFES should consider an update of the existing General Order to reflect the following:

- Where a report is received of an incident that involves Death or Serious Injury resulting from contact with police, ALL key policing witnesses are to be kept separate from the moment it is operationally safe to do so, until after all witnesses have provided their account to investigators.
- This direction is to be given by the senior ranking police member at the incident, and then reinforced by the most senior ranking officer in charge of the response or investigation into the incident.
- If at the time of making the decision, circumstances are such that key policing witnesses cannot be separated, alternative measures must be taken to ensure evidence is not contaminated, and that the integrity and transparency of the process is maintained.
- This could include the use of Body Worn Video to record all actions of police until such time as separation can occur, or a direction to officers not to socialise, communicate or confer with other witnesses. Any alternative measures should be appropriate to and fit individual circumstances at the time.
- The above decisions are to be communicated to and acknowledged by subject officers. The direction its rationale and acknowledgement by subject officers is to be recorded on the relevant critical decision log.
- Consideration should also be given as to how these requirements can be included in to training programs undertaken by the NTPFES College, so that officers at all levels in the organisation are aware of their responsibilities when these incidents occur.

## Use of Interpreters

The General Order '*Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public*' states;

*25.6 Interpreters should be used wherever necessary (refer General Order – Interpreters and Translators).*

The General Order – *Interpreters and Translators* further state:

*15. Members should also be aware that a failure or refusal to provide an interpreter may, in certain circumstances, contravene the Anti-Discrimination Act. Members shall not dissuade a person from requesting an interpreter in any way. It is a person's right to be able to communicate freely and fully with police.*

*16. Likewise, in any situation where evidence is obtained from a victim or witness by interview, and English is not the first language of the victim or witness, the use of an interpreter is likely to enhance the quality and accuracy of that evidence.*

*Investigators need to remain aware that the provision of interpreters and support persons are a fundamental right for any aboriginal person where English is not their first language.*

The investigators who attended Yuendumu from Alice Springs on 10 November 2019 immediately obtained 5 audio statements from Aboriginal witnesses at Yuendumu<sup>170</sup>. None of these witnesses were interviewed in the presence of an interpreter. Only one was offered a support person when being interviewed. None were offered counselling.

During questioning it was not established if any of the witnesses spoke English as their primary language. While all seemed to have a reasonable interpretation of English it was not established by the investigators if the witness required any form of assistance (with the provision of either an interpreter, support person or counsellor).

Interpreters were utilised by investigators after the 10 November 2019.

## Comments & Considerations

The obtaining of statements from Aboriginal witnesses by investigators demonstrates a lack of compliance with the General Orders detailed above. It is acknowledged that the witnesses spoken to have a reasonable interpretation of English, the oversight of investigators in establishing if any of the witnesses required any form of assistance, further demonstrates the lack of compliance or awareness.

The situation at Yuendumu on the 10<sup>th</sup> of November may well have been one where the availability of and accessibility to interpreters was not able to be achieved.

However, in an investigation of this nature, the importance of obtaining quality and accurate evidence as contemporaneously as possible cannot be understated.

### Considerations

Consideration should be given to improving procedures relating to the use of interpreters by ensuring that an assessment of the need for and use of interpreters, forms part of the initial planning of an investigation

## Crime Scene & Re-enactment

Following the shooting of Kumanjaya Walker no crime scene was established at House 511. Questions and concerns from the family of Kumanjaya Walker were also raised as to why no crime scene was established at the house.

There are no critical decisions recorded as to why there was no crime scene established. An explanation for a crime scene is provided by Constable Eberl in his interview<sup>171</sup>:

*WOOD: ...Yep. Um, why was a crime scene not established at that house?*

*EBERL: For safety reasons. We needed to get out of there because um, it's – you can only see how things would have unfolded. I know being what community members are like, if we were there rendering first aid, whether they would have attacked us there while we were trying, but if he would have passed away there in the house, then they would have wanted payback then and there.*

*WOOD: Mm-hm.*

<sup>170</sup> Yuendumu witnesses included Ayetta DICKSON, Leanne OLDFIELD, Elizabeth SNAPE, Jerome JURRAH & Nathan COULTHARD.

<sup>171</sup> Refer Adam Eberl Statement 2, Folder 40 Folio 34

*EBERL: And potentially one or maybe more people could have died or got seriously injured etcetera.*

A crime scene was established once the TRG members arrived in Yuendumu and at a time when next of kin were notified. By that time the crime scene had already been entered by family members and contaminated, Kumanjayi Walker's hat, which had fallen off when he was dragged to the police vehicle, had been placed back inside House 511.

## Comments and Considerations

A similar occurrence was reported in a previous 'death in custody' investigation involving a police shooting at Wadeye. It was reported by the Coroner at the time;

*"Some criticism was levelled at the police for failing to require Whittington to participate in a reconstruction at the scene of the shooting. I accept the explanation given by Hofer that such a reconstruction was impractical in the circumstances where there was considerable unrest in the community and Whittington's safety was endangered if he remained in the community (transcript p.357 & 366). I also accept the explanation given by Hofer that it was very difficult to secure the crime scene for similar reasons (transcript p.354)".*

For the same concerns held by police as outlined in the above case (Jongmin) no crime scene was immediately secured or a re-enactment contemplated.

### Considerations

There are no considerations in relation to this issue

## Welfare

'Death In Custody' protocols regarding 'welfare' are contained within the General Order *Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public* state;

*30. It is essential that the duty of care and welfare obligations to members involved in incidents and their families be appropriately addressed.*

*30.1 Any member involved in such an incident will be provided welfare services after appropriate initial enquiries are conducted. (e.g. - Employee Support Service).*

*30.2 A member will be given an opportunity to contact their family.*

*30.3 Where necessary a member directly involved in the incident is to be offered an examination by a medical practitioner.*

*30.4 The NTPFES Chaplain should be advised of such incidents and should where practical be permitted to attend scenes of fatal incidents and deaths in custody/care in order to provide appropriate support.*

*30.5 The Commissioned Officer in overall charge of the investigation shall ensure that immediate welfare assistance is offered to those members of the public directly involved in the incident or at the incident scene (i.e. witnesses). However, long term arrangements of welfare support will not be the responsibility of the NTPF.*

All welfare obligations regarding police members were met except for the NTPFES Chaplain visiting the incident scene.

Following the shooting senior police executives flew to Yuendumu on Sunday 10 November 2019, including Acting Assistant Commissioner Wurst and Acting Commissioner Michael Murphy.

Police met with family and senior community elders and addressed immediate concerns over the actions of police and the investigation that was to follow. Cultural considerations were respected including allowing the community to walk through the police station to the scene (police cells) where Kumanjayi Walker died. No family counselling services were specifically arranged by police, but senior police management were in constant dialogue with family and senior community elders over the days following the shooting.

## Comments and Considerations

The protocols outlined in the General Order *Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public* were followed and all obligations regarding police were met (except as stated the police chaplain visiting the scene).

As detailed above, in a demonstration of the welfare concerns for the Yuendumu Community, Acting Commissioner Michael Murphy APM and Acting Assistant Commissioner Travis Wurst travelled to Yuendumu and met with family members and senior elders to discuss and address immediate concerns.

### Considerations

The obligations under the General Order are specific in relation to the provision of immediate welfare assistance and that NTPF is not responsible for long term arrangements of welfare support.

The death of Kumanjayi Walker and the subsequent prosecution of Zachary Rolfe has been a unique event for the NTPF, and fortunately one that it has not had to deal with on a frequent basis.

The NTPFES health and wellbeing could consider using this matter to evaluate whether the provisions of the General Order relating to welfare are contemporary and fit for purpose.

## Notification of Next of Kin

The Royal Commission into Aboriginal Deaths in Custody, adopted by both the NT Government and NT Police states:

*Recommendation 19. That immediate notification of death of an Aboriginal person be given to the family of the deceased and, if others were nominated by the deceased as persons to be contacted in the event of emergency, to such persons so nominated. Notification should be the responsibility of the custodial institution in which the death occurred; notification, wherever possible, should be made in person, preferably by an Aboriginal person known to those being so notified. At all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known*

In 1994/1995 The NT Government gave qualified support to this recommendation. In the NT Government implementation report, it stated:

*“The relevant Police General Order Coroners and Inquests – Code C9 has also been amended to include the words “as soon as possible” and “a family representative”, thus achieving the intent of the Recommendation”.*

In Police General Orders now (Coronial Investigations and Inquests) and as back as far as they exist on the intranet (2008), the term “as soon as practicable” is used, not “as soon as possible”.

In the Deloitte Review (released in August 2018) into the implementation of the recommendations, NT Police responded with:

NT Police General Order – Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1)

*25.10 If the deceased is an Aborigine, a family representative of the deceased (where appropriate) and the relevant Aboriginal Legal Service or other appropriate Aboriginal community organisation is to be notified of the death as soon as practicable.*

*25.11 Information regarding the progress of the investigation that is being sought by the deceased’s family, the Aboriginal Legal Service, or Lawyers representing the family should only be released through the Coroners Office.*

At 2305 hrs on Saturday the 9<sup>th</sup> of November 2019, Eddie Robertson a family member of Kumunjayi Walker contacted Yuendumu Police requesting an update on Kumunjayi Walkers condition. No information was provided in response to this request which was made some 2 hours after Kumunjayi Walker had been confirmed as deceased by the Yuelamu health staff.

At 0007 hrs on Sunday the 10<sup>th</sup> of November 2019, Sgt Zhang, now the Police Forward Commander at Yuendumu contacted Eddie Robertson by phone advising that Kumunjayi Walker was still receiving medical treatment, this advice was some three hours after Kumunjayi Walker had been confirmed as deceased by the Yuelamu health staff.

The notification to family of Kumunjayi Walker’s passing by police was delayed, primarily over concerns for both community and police safety. The decision to delay notifying family of Kumunjayi Walker’s passing was made by Acting Assistant Commissioner Wurst. He justified the rationale behind this decision as follows<sup>172</sup>.

*WURST: He had passed away some ten minutes or so earlier. Um, one of the other critical decisions that flow from that at this point in time was, with the knowledge that he had passed away, ah, I don’t know whether the health staff were at the police station by this stage or not, um, I’m unsure. But one of the decisions the required – required to be made at this time was when and how we informed the community that this person had passed away.*

*We had an absolute need to inform the community. Um, so that they could respectfully commence their um, cultural grieving process, a process that I’ve, have knowledge of. Um, and it’s a very important process for the Warlpiri people and the Warlpiri family, particularly those closely related to the person who passed away.*

*I however, made the decision that we would not at that point in time inform the family. For all the reasons I’ve previously stated, I was not comfortable that they, and when I say they, the*

<sup>172</sup> Refer Transcript of interview with A/AC Wurst, Folder 50 Folio 139

*community members who were out the front of the police station and those that, there was only um, there was a lot more people in the community that were out the front of the police station. They themselves could have also come to the station and it placed – would have placed the station under greater threat of um, and risk of harm to the station itself and the officers, people within.*

*Ah, as I say, you had the um, the scenario, that if we had two health staff in there as well, we have other people in that station that are not police, but we have a duty of care to them because we've called them to our um, to our aid.*

*So I made the decision at that time ah, that we would not inform the family that the young person – or the person had passed away. However, um, I was already developing a plan for how we would do that, and do that as soon as possible, for the community.*

At 0450 hrs on Sunday the 10<sup>th</sup> of November (some 8 hours after Kumunjayi Walker was confirmed deceased), Eddie Robertson was contacted by Police at Yuendumu and requested to attend the Yuendumu Police Station. On arrival he is told that Kumunjayi Walker is deceased and is asked to identify the body. Robertson declines this request.

At 0644 hrs on Sunday the 10<sup>th</sup> of November, Yuendumu Police and TRG informed Rekeisha Robertson that Kumunjayi Walker was deceased.

At 0808 hrs on Sunday the 10<sup>th</sup> of November NAAJA were notified that Kumunjayi Walker was deceased

## Comments and Considerations

Recommendation 19 of the *Royal Commission in to Aboriginal Deaths in Custody* and NT Police General Order – *Deaths in Custody and Investigation of Serious and / or Fatal Incidents Resulting from Police Contact with the Public* are both quite specific in relation to the requirements where an aborigine person is deceased, of the notification to a family representative of the deceased (where appropriate) and the relevant Aboriginal Legal Service or other appropriate community organisation as soon as practicable.

Some 8 hours passed between Kumunjayi Walker being confirmed deceased and advice being provided to a family member (Eddie Robertson) that Kumunjayi Walker was deceased. In normal circumstances, this delay could not be considered to be as soon as practicable, and to meet the requirements of the Royal Commission recommendation or the Police General Order.

As has previously been highlighted in this report, this situation was not a normal situation. As detailed above, the decision to delay the notification of family was made by Acting Assistant Commissioner Travis Wurst and was made in relation to concerns for public safety and the safety of Police and Health staff who were inside the Yuendumu Police station, given the large number of persons gathering out the front of the police station.

Whether the decision to delay the notification to family was right or wrong it is difficult to reconcile given the competing interests of public safety and obligation to advise the family. The rationale provided by AC Wurst is one that indicates he had considered both factors and made the decision that he believed was best to prevent any further harm to members of the community or the persons inside the police station.

Unfortunately, the way this decision was then executed, can only be described as appalling. The failure to provide any response to inquiries made by family members at 2305 hrs, followed by Police contact and advice to family members that Kumunjayi Walker was still receiving

medical treatment at 0007 hrs, followed by Police contact to a family member who is requested to attend the police station and on arrival is advised Kumunjayi Walker is deceased and is then asked to identify the body, demonstrates little consideration and compassion for the relatives of Kumunjayi Walker.

### Considerations

NTPFES should consider improving its procedures relating to the notification of next of kin by using the unfortunate learnings from this situation to develop practice, procedures and strategies that can be used to prevent the same issues occurring should similar occurrences occur in the future.

## Deployment of para-military police into Aboriginal Communities

The Royal Commission into Aboriginal Death in Custody (RCIADIC) recommendations included the following recommendation (61);

*RCIADIC 61. That all Police Services review their use of para-military forces such as the New South Wales SWOS and TRG units to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities.*

This recommendation was accepted by the Northern Territory Government with the 'Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody' reporting;<sup>173</sup>

The Northern Territory Government's Territory Response Group has operational procedures and guidelines in place to ensure that there is no unavoidable use of the Territory Response Group.

The Northern Territory Government has implemented Recommendation 61 through operational procedures and guidelines in place to ensure that there is no unavoidable use of the Territory Response Group.

Unfortunately, this recommendation (61) was not incorporated into the regulations (SOP's) relating to the IRT. The Alice Springs IRT did not exist when the recommendations were made between 1987-1991. The TRG has strict procedural controls that require Assistant Commissioner approval prior to any deployment into an Aboriginal community.<sup>174</sup>

## Comments and Considerations

The RCIADIC recommendations were made between 1987 and 1991 and were made to ensure that there was no avoidable use of police tactical teams in circumstances affecting Aboriginal Communities.

The recommendation pre-dates the formation of the Alice Springs IRT or the incorporation 'military style tactics and weaponry', when responding to Active Armed Offender incidents.

<sup>173</sup> Deloitte Access Economics 'Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody' Department of the Prime Minister and Cabinet August 2018, Folder 71 Folio 44

<sup>174</sup> General Order – Tactical Response Group – Para 24, Folder 14 Folio 55

## Considerations

NTPFES should consider

- that the review of the IRT and its Standard Operating Procedures include strict procedural protocols that require Assistant Commissioner approval prior to any deployment to an Aboriginal Community, in line with those governing deployment of the TRG.
- that as part of any operational planning in relation to deployment of the IRT ; TRG; or any police response involving the use of military style tactics or weapons in to remote or indigenous communities, a community impact assessment is undertaken, considered and actions or decisions arising from that assessment are recorded.

## Investigation - Recording of Critical Decisions

The requirement to record 'critical decisions' is contained in the NTPOL – Instruction – *Major Crime, Major Investigation and Critical Incident Response*. This instruction was recently updated and released to members on 15 November 2018<sup>175</sup>.

The Coroner has previously criticised police for their failure to record 'critical decisions' in major investigations<sup>176</sup>. To ensure critical decisions are recorded in a manner consistent with the proper conduct of an investigation and in line with the Coroner's expectations the Instruction provides clear direction to members.

*One of the most important aspects of the management of any investigation is the systematic recording of decisions made for the advancement of that investigation. Detailed recording of all critical decisions including the rationale is to be maintained on the investigation Critical Decision Log.*

The Coronial Investigation could only locate 2 'Critical Decisions' recorded on the Investigation Log in PROMIS.

These two decisions were made on 10 November 2019. No other critical decisions were recorded in the investigation log for the duration of the investigation. Part of these critical decisions related to the closure of the crime scene with the second critical decision contradicting the first critical decision.

A Case Note Entry was submitted on 20 November 2019 by Senior Sergeant Grieve, Major Crime Section;

*GRIEVE reports the below is required to provide an accurate record of investigative decisions pursuant to decision making structure:*

1. *Identify times, dates and make up of Crime Investigation Management Committee (IMC) meetings.*
2. *Obtain a list of Critical Decisions made by the IMC during meetings held.*

<sup>175</sup> Northern Territory Police Gazette (N96/G23/15 Nov 2018) Folder 71 Folio 39

<sup>176</sup> Paragraph.80 - Inquest into the Death of Kieffen Raggett [2011] NTMC 011 Folder 64 Folio 4

3. *Obtain minutes (sic) of such meeting and/or sufficient detail to allow for accurate representation of same.*

In response to the concerns raised the Senior Investigator In Charge of Operation Charwell responded through his proxy;

*10/02/2020 Morrissey reports in conversation with Pennuto and Newell this information not required for the criminal investigation. Follow up to be finalised.*

On review the instruction by Senior Sergeant Grieve appears to have been ignored throughout the investigation with many critical decisions recorded in various notes and meetings but not recorded in accordance with policy, as evidenced by the following extract from a Senior Officers statement.

*We established the use of WebEOC as the primary records management and information sharing platform for the ongoing operational response to this incident. Staff within the POC were tasked to establish WebEOC (Sergeant Jason Rothe) and maintain all records and decisions within the system moving forward.<sup>177</sup>*

A review of the entries in WebEOC do not support the claim that initial critical decisions were recorded in this platform.

In response to the death of Kumanjayi Walker an Investigations Management Committee (IMC) was constituted. Some of the critical decisions emanating from the first IMC meeting held at 1700 hours, Sunday 10 November 2019, were logged in PROMIS however not in a format that allows for examination as to exactly who made the decision and the rationale behind the decision<sup>178</sup>. Of note, one of the entries logged as a 'critical decision' notes;

*'No Coroner's Authority to be enacted'*

It was unable to be determined exactly who made that decision or in what context it was made. The meeting was neither audio recorded or minuted by any of the persons present. The format and structure of an IMC during a response to a declared critical incident has no precedence in the NTPOL<sup>179</sup>.

The Instruction – *Major Crime, Major Investigation and Critical Incident Response* mandates the requirement for a Joint Management Committee (JMC) to oversee an investigative response but makes no mention of the requirement for any type of IMC intervention<sup>180</sup>.

There were at least 3 further IMC meetings that again were not recorded or minuted. Any critical decisions decided during those meetings are contained to notes from the few members who elected to record details of those meetings. It was not until 22 November 2019 that a JMC was established. All minutes emanating from those minutes were documented however any critical decision made were not recorded on the PROMIS Investigative Case Log.

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<sup>177</sup> Paragraph 55 – Statement of Commander Travis Wurst, Police Operations Commander, Operation Charwell Folder 50 Folio 140

<sup>178</sup> The 'Critical Decision' to refer the matter to the DPP on Monday 11 November 2019 was not recorded.

<sup>179</sup> Commander Dole stated there was confusion around the naming conventions of the meeting due to Assistant Commissioner Antich being new to the jurisdiction – Statutory Declaration – Commander Martin Dole – Para.8, Page 3 Folder 39 Folio 30

<sup>180</sup> A JMC is required within 24 hours of a Major Crime/Critical Incident being declared.

During the first IMC meeting it was reported

*'AC Anticich provided a direction at this initial meeting that all Decisions emanating from the IMT (sic) were to be recorded for the purpose of uploading to the PROMIS job'<sup>181</sup>. Clearly this did not occur.*

In summary the recording of critical decisions, of which there were many, was ad-hoc and not in adherence with the Instruction – *Major Crime, Major Investigation and Critical Incident Response*.

## Comments and Considerations

The issue of decision making and recording of critical decisions is a common theme throughout several areas of this investigation. A contributing factor to this issue is the absence of a decision making model for the NTPF to enable consistency in determining what factors need to be considered when making a decision, and when, where and how the decision and the rationale for the decision should be recorded.

### Considerations

NTPF should consider that at the commencement of any police response to an incident of this nature a common platform is selected for the recording of critical decisions (e.g. Promis, WebEOC or Serpro) and that all critical decisions including IMC/JMC meetings for a declared 'Major Crime/Critical Incident and critical decisions logged as prescribed by the Instruction – *Major Crime, Major Investigation and Critical Incident Response* are recorded on this platform.

## Recruitment Procedures

The Northern Territory Police Recruit Constable Information Booklet provides specific advice to prospective police applicants regarding their background.

*Applicants who are currently excluded from applying to other policing jurisdictions will have their applications and reasons for exclusion reviewed by the Superintendent with responsibility for recruitment for a determination as to whether the applicant proceed to testing or be referred to the Integrity Panel.*

*Applicants must make full disclosure in their application including all criminal and civil proceedings, all spent convictions, all traffic offences including traffic tickets and court appearances, all juvenile offences including police cautions, all Domestic Violence Order History, and any bankruptcy proceedings.*

*If an applicant declares any of these matters their application may be taken before the Integrity Committee. Applicants will be advised and given the opportunity to provide a written response to the Integrity Committee. The Integrity Committee will make a determination about the applicant's suitability to proceed in line with the Integrity Guidelines as detailed in the information booklet.*

*If an applicant fails to declare or disclose any matters, their application will be taken before the Integrity Committee and it will be assumed that the failure to disclose was deliberate, unless*

<sup>181</sup> Statutory Declaration of Commander Martin Dole – Para 9, P.3 Folder 39 Folio 30

*the applicant can prove otherwise. Applicants who fail to disclose are likely to be permanently excluded from applying to the Northern Territory Police Force.*

The Northern Territory Police Recruitment Manual, also provides specific instructions in relation to checks to be undertaken on applicants who have indicated service in the defence<sup>182</sup>:

*Where an applicant has indicated service in the Defence you are required to send a letter to the relevant authorities requesting particular checks to be conducted. Run a standard applicant report including the following parameters: (Commencing with Armed) **Forces, Months, Rank, Reason Disch, Service, Service No, Years***

A review of the recruitment of Zachary Rolfe into the NTPOL identified that Rolfe initially provided false information on his written application to join the Northern Territory Police. He indicated that he had not applied to join any other Police Force (completing his NTPOL application the day after applying to join the Queensland Police Force).

He did not initially disclose an incident in which he was involved in at Townsville where he was fined by Queensland Police. Further he did not self-disclose his adverse military history – a mandatory requirement in the application form for ex-ADF members.

During interview Rolfe conceded that he had applied for other policing jurisdictions (QPOL had rejected his application by that time) and mentioned the incident in Townsville. The recruiting staff assessed him as

*'...well presented and confident during interview. Was forthcoming and honest throughout...'<sup>183</sup>*

Rolfe was not entirely forthcoming during interview failing to disclose his adverse military history, which including a charge of stealing (dishonesty) while serving in the ADF. Had he disclosed this matter his application would have been referred to the NTPOL Integrity Committee who could have in all likelihood rejected his application.

It is an offence of False Representation under s154 Police Administration Act 1978 for a person to knowingly make a false representation in connection with an application for appointment to the Police Force.

Pursuant to the provisions of the s154 of the Police Administration Act, a brief of evidence was provided to the Commissioner of Police for consideration. Based on an opinion and advice received from the Department of Public Prosecutions indicating there was insufficient evidence to proceed and that it was not in the public interest to do so<sup>184</sup>, no formal proceedings were initiated.

## Comments and Considerations

The coronial investigation identified significant systemic failures in the recruitment procedures used by NT Police, relating to integrity checks and the obtaining of the prior service history of former Australian Defence Force members and Australian Law Enforcement members.

<sup>182</sup> Refer NT Police Recruitment Manual (Updated 2014) refer Folder 70 Folio 30

<sup>183</sup> Interview Panel Recommendation – Bruce Van Haeften (NTPOL Psychologist) – Applicant Zachary Rolfe, Folder 11 Folio 18

<sup>184</sup> Statutory Declaration of Assistant Commissioner Michael White, Para 36, p4. Folder 49 Folio 135

These issues primarily relate to the failure of NTPF to comply with its own instructions and obtain service records for applicants who have indicated service in the Defence forces.

In a statement obtained from Sergeant Kevin Agnew who has been a member of the Police Recruitment Section since 2011, he advises the following in relation to checks carried out on the service history of Rolfe and more broadly around requests for service history from defence<sup>185</sup>.

*I did not carry out any defence service history on Constable Rolfe due to past experience had shown that obtaining information from any military service was rarely received, it was unreliable for recruitment timelines and there was no way of regulating what was and not issued by the military. Some applicants did present a copy of their service history, but it was not certified and unknown if complete. In fact, there were issues with obtaining our own intelligence checks in a timely manner before the squad started at the police college. It was not uncommon for a couple of candidates to start recruitment training without checks being returned to recruitment. However, over the years, this matter has been addressed and priority has been placed on all applicants having police intelligence checks returned prior to them commencing.*

In a statement provided by Superintendent Sachin Sharma, who was the Superintendent in charge of the Police Recruitment and Selection Division between May 2015 and November 2018, he makes the following observations in relation to obtaining information on ex-defence force members<sup>186</sup>:

*When I commenced within this portfolio, I was advised by the staff about difficulties in obtaining any meaningful internal disciplinary history/antecedents of ex-Defence Force members. I was advised, on many occasions, either there is no information provided whatsoever, or a letter sent only confirming the service details of an applicant which would take excessive period of time. For those reasons, the Police recruitment section had stopped requesting the information. I do not know who and when this decision was made; however, this practice was well in place before I commenced in that portfolio.*

The failure to obtain prior service records meant that recruit applicants with an adverse history who had not self-declared their adverse history were getting through the probity checks and selection process, with their applications unchallenged.

This also meant that claims made in applications were not validated, bringing in to question not only the integrity of applicants but the integrity and rigour of the whole NT Police recruitment process.

In the case of Constable Zachary Rolfe, the nature of his adverse history (being a dishonesty offence), there is a strong possibility that had this been known to the selection panel, he may not have been recruited by the NT Police<sup>187</sup>.

Inquiries made by the coronial investigation team have been unsuccessful in identifying when, who, and at what level the decision was made to stop submitting requests to Defence for applicants prior service history were made. It cannot be determined if this decision is one that was made at a senior police level, or one that was made at an operational level due to the perceived difficulties in obtaining the information in a timely fashion.

<sup>185</sup> Refer Statutory Declaration Sergeant Kevin Agnew, Folder 32 Folio 1

<sup>186</sup> Refer Statement 2 – Superintendent Sachin Sharma, Folder 48 Folio 115

<sup>187</sup> Refer Statement 2 – Superintendent Sachin Sharma Folder 48 Folio 115

NT Police have now addressed the identified issues and amended their practices and procedures. Prior service history checks are requested on all former Australian Defence Force members and Law Enforcement members who submit recruit applications.

### Considerations

NTPFES should consider:

- where decisions are made relating to recruitment, probity checks and validation of claims made by applicants that these critical decisions should be made at senior officer level and should be formally recorded in meeting minutes and formally communicated in policy or by other appropriate means.
- When requesting records from ADF or other police forces on applicants with previous service, that medical records including any mental health related records are also requested.

## Mandatory Drug and Alcohol Testing for Police

In the early stages of the investigation into the shooting death of Kumunjayi Walker the Acting Deputy Commissioner, Dr Narelle Beer, asked a pertinent question – Do (Northern Territory) Police have the power to obtain a blood sample from Constable Rolfe?

Her experience in Victorian Police told her that this was a mandatory requirement in that jurisdiction, but she was quickly informed that there was no such power in existence to do so in the Northern Territory.

At the point of time when Rolfe shot and killed Kumunjayi Walker there was no reason to suspect that he was under the influence of drugs or alcohol but, without specific legislative powers, there was no lawful power to enable investigators to demand Rolfe provide a sample of breath or blood<sup>188</sup>.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>188</sup> Rolfe was not asked by the initial investigation team to volunteer either a sample of breath or submit to a blood test.



The absence of any legislative authority for the NTPF to test its officers for drug and alcohol use while on duty, and the reliance on the self-reporting provisions of the *Work Health and Safety Act* to require members who have a medical diagnosis or are undergoing treatment that impacts on their capacity to undertake their duties, highlights a lack of rigour in current organisational systems and creates a significant risk for the Northern Territory Police Force, its officers, and the community it polices.

At the time of submitting this report, the Northern Territory Police have drafted legislative provisions to introduce the requirement for Northern Territory Police Officers to be subjected to alcohol and drug testing.

### Considerations

NTPFES should consider that when drug and alcohol testing legislation is enacted:

Any accompanying policy includes the development of robust reporting systems that mandates officers who are subject to a medical diagnosis or medical treatment that may impact on their capacity to perform duties, to report this diagnosis and the nature of the treatment, and how once reported ongoing management of the officer will be carried out.

## Use of Force Guidelines & Policy

The Australian New Zealand Policing Advisory Agency (ANZPAA) has developed Use of Force Principles to provide guidance for police jurisdictions in the development and application of policies and procedures and promote cross-jurisdictional co-operation and continuous improvement in the area of operational safety<sup>189</sup>.

The ANZPAA principles define use of force by police officers as “any *situation where police use physical force or other techniques, including a weapon, instrument or implement in the execution of their duty*”.

The key ANZPAA use of force principles are<sup>190</sup>:

- *The authority to use force is derived from the law*
- *Police should only use force that is reasonable, necessary, proportionate and appropriate to the circumstances.*
- *Police should use no more force than is reasonably necessary for the safe and effective performance of their duties*
- *Individual police are accountable and responsible for their use of force and must be able to justify their actions at law*

The ANZPAA use of force principles also provide some underpinning principles as guidance for police organisations<sup>191</sup>:

*Police organisations should:*

- *use a standard model to guide police in the use of force*

<sup>189</sup> Refer ANZPAA Use of Force Principles : Folder 28 Folio 165 (named Folios 1101-1212 pg. 1178)

<sup>190</sup> Refer ANZPAA Use of Force Principles : Folder 28 Folio 165 (named Folios 1101-1212 pg. 1178)

<sup>191</sup> Refer ANZPAA Use of Force Principles : Folder 28 Folio 165 (named Folios 1101-1212 pg. 1178)

- *provide police with regular skill, knowledge development, and equipment to safely and effectively respond to potential use of force incidents*
- *make support services available to police involved in use of force incidents*
- *emphasise the importance of effective communication and conflict resolution skills*
- *provide guidance to police to manage risks associated with the use of force*
- *maintain governance structures to report, record, monitor and evaluate the use of force to improve public and police safety*

The Northern Territory Police General Order “Operational Safety and Use of Force” provides the following principles which underpin the General Order:

- *The authority to use force is derived from the law. Individual members are accountable and responsible for their use of force and must be able to justify their actions at law.*
- *Members should only use force that is reasonable, necessary, proportionate and appropriate to the circumstances. Members should use the minimum amount of force required for the safe and effective performance of their duties.*
- *Force should only be employed in a manner consistent with the provisions of the Criminal Code Act or any other legislation empowering members to use force.*
- *Improper use of force undermines the legitimacy of police, erodes public confidence and respect for police.*
- *Governance structures be maintained to report, record, monitor and evaluate the use of force to improve public and police safety.*
- *The success of an operation will be primarily judged to the extent to which use of force is avoided or minimised.*

In addition to the General Order – Operational Safety and Use of Force, the Northern Territory Police have a several guidelines and models to support officers in their decision making when considering the use of force. These include but are not limited to: *Instruction: Operational Safety and Use of Force, Instruction: Operational Response, General Order: Territory Response Group, Police, Practice and Procedures: ICENCIRE, Operational Safety, and Role of Forward Commander, Instruction – Northern Territory Incident Control System (NTICS).*

However, there are primarily three models that form the foundation for a police response to any incident, they are: the Ten Operational Safety Principles, ICENCIRE and the Tactical Options Model.

## Ten operational safety principles.

The ten operational safety principles are detailed in the table below:

<b>1. Safety First</b>	The Safety of police, the public and offenders/suspects is paramount
<b>2. Risk Assessment</b>	An assessment is to be made of the possible risks associated with any course of action or option being considered.
<b>3. Take Charge</b>	Effective command and control must be exercised.
<b>4. Planned Response</b>	From an unplanned response every effort must be made to develop a plan of action.
<b>5. Cordon and Contain</b>	Unless it is impractical to do so a "cordon & contain" approach is to be adopted.
<b>6. Avoid Confrontation</b>	A violent confrontation is to be avoided as much as is reasonably possible.
<b>7. Avoid Force</b>	The use of force is to be avoided as much as is reasonably possible.
<b>8. Minimum Force</b>	Where force cannot be avoided, only minimum force reasonably necessary and justifiable is to be used.
<b>9. Avoid Forced Entry Searches</b>	Forced entry searches are to be used as a last resort.
<b>10. Resources</b>	It is accepted that the "safety first" principle may require more resources, more complex planning and more time.

The Operational Safety Principles were developed to be observed when developing a plan for an operation and, as far as possible, when reacting to an incident. The effect of these measures is to achieve the objectives of the task with minimum harm to persons involved. Not all of these principles can or should be applied on every occasion. It is up to the members attending to know them and make an assessment as to what to apply and when in a given situation.

The main purpose is to resolve confrontations with the minimal amount of force and the maximum level of safety possible. The operational safety principles need to be considered when responding to incidents, particularly when they involve a person who is armed or reasonably suspected of being armed<sup>192</sup>.

The Ten Operational Safety Principles are central to everything an officer does operationally. They are a fundamental part of Police recruit training, during which they are constantly reiterated throughout their months of training at the NTPFES College. They

<sup>192</sup> Refer Facilitator Guide Defensive Tactics Session 1 – Defensive Tactics Module No. NTP/100 Trainee Constable – Folder 24 Folio 13

are also further reiterated as part of the annual requalification training operational police officers are required to undertake<sup>193</sup>.

## I.C.E.N.C.I.R.E.

The I.C.E.N.C.I.R.E model is taught as a model for a planned response to an incident that involves taking a “cordon and contain” approach to an incident. However, the principles can be applied to a much wider variety of jobs and situations. It may be that not all ‘steps’ in the mode are used, but for many responses, the principles of ICENCIRE will and can be applied.

The acronym ICENCIRE is explained in the table below

I	Isolate
C	Contain
E	Evacuate
N	Negotiate
C	Conclude
I	Investigate
R	Rehabilitate
E	Evaluate

Examples of the application of the ‘steps’ are:

- Isolate the offender to a location under your control (inner perimeter)
- Contain the incident location so that no others come under threat and maintain control of area (outer perimeter)
- Evacuate those not involved who may be in danger from within perimeters
- Negotiate to bring about a successful resolution (if applicable)
- Conclude the incident in the most appropriate manner (arrest/hospital/make safe)
- Investigation (by appropriate section) the cause and consequences of the incident
- Rehabilitate the scene / residents / victim / officers involved (counselling); and
- Evaluate procedures used to identify deficiencies and successes

The ICENCIRE principles are a sound policing approach for most incidents and are as applicable for high risk, volatile situations as they are for many more routine matters, and their application can assist in turning an unplanned immediate response to an incident into a planned response.

## Tactical Options Model

Police forces internationally and nationally work within a Tactical Options Model framework. NT Police receive training in the use of various weapons and tactics to deal with varying degrees of resistance or violence they may encounter during the course of their duties.

The Tactical Options Model, along with the 10 safety principles, the ICENCIRE model and use of force principles gives officers relevant information on how to evaluate the use and level of force that may be required or is necessary to control a subject or situation. These tactical options range from presence to empty hand tactics, to less lethal weapons and lethal force options.

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<sup>193</sup> Refer Statement – Detective Senior Sergeant Andrew Barram Folder 33 Folio 6

The tactical options model has been developed to assist officer in understanding the appropriate level of force in operational situations. Throughout the Tactical Options Model the common theme is a safety-first attitude, together with communication skills which are used to promote de-escalation of the incident and thus ensure the minimum use of force.

The model is comprised of 10 tactical options, each of these options has several different actions open to it, which are described as follows:

TACTICAL OPTION	OPTIONS
Presence	<ul style="list-style-type: none"> <li>a) Re-assess and evaluate the situation</li> <li>b) Maintain a safe distance</li> <li>c) Field interview stance</li> <li>d) Consider back up</li> </ul>
Other Weapons	<ul style="list-style-type: none"> <li>a) Consider other weapons that may, out of necessity, be available and appropriate in the circumstances.</li> </ul>
Aerosol Subject Restraint	<ul style="list-style-type: none"> <li>a) Present ASR</li> <li>b) Prepare ASR</li> <li>c) Continuous Assessment</li> <li>d) Verbal Warning (if appropriate)</li> <li>e) Deploy ASR (Spray- Move- Assess)</li> </ul>
Tactical Disengagement	<ul style="list-style-type: none"> <li>a) Withdrawal</li> </ul>
Electro-muscular Control Device	<ul style="list-style-type: none"> <li>a) Present ECD</li> <li>b) Continuous Assessment</li> <li>c) Verbal Warning (if appropriate)</li> <li>d) Deploy ECD</li> <li>e) Reassess (consider movement if necessary)</li> </ul>
Baton	<ul style="list-style-type: none"> <li>a) Present Baton (open or closed)</li> <li>b) Loaded position (open or closed)</li> <li>c) Continuous assessment</li> <li>d) Deploy Baton (Strike with Baton – Major muscle groups)</li> </ul>
Cordon and Contain	<ul style="list-style-type: none"> <li>a) Isolate subject</li> <li>b) Contain situation</li> </ul>

	<ul style="list-style-type: none"> <li>c) Maintain a safe distance</li> <li>d) Call back up</li> </ul>
Negotiation	<ul style="list-style-type: none"> <li>a) Communication</li> <li>b) Persuasion / Assertive</li> </ul>
	<ul style="list-style-type: none"> <li>c) Advice</li> <li>d) Instructions</li> </ul>
Firearm	<ul style="list-style-type: none"> <li>a) Verbal Warning</li> <li>b) Continuous assessment</li> <li>c) Hand on Firearm</li> <li>d) Draw Firearm (weaver stance/ presentation drill)</li> <li>e) Aim firearm (sight alignment / conscious decision to fire)</li> <li>f) Reassess situation</li> <li>g) Verbal warning</li> <li>h) Discharge firearm (Lethal Justification Sec.28 &amp; 29 of the Criminal Code Act)</li> <li>i) Assess situation (scan to the guard Position)</li> </ul>

It can be seen in the circular representation of the Model below, that central to the whole issue of the use of force is safety first. Prior to the application of any level of force, communication skills should be exercised<sup>194</sup>.



<sup>194</sup> Refer Facilitator Guide Defensive Tactics Session 1 – Defensive Tactics Module No. NTP/100 Trainee Constable – Folder 24 Folio 13

## Analysis, Conclusions and Considerations

As part of the coronial investigation, the review of the current policy, procedures and training provide sound foundations for responding to incidents and preventing violent confrontations and aligns with current national best practice guidelines.

However, the review of Use of Force undertaken by the coronial investigation team in to the incident at Yuendumu found evidence of issues similar to those identified in reviews undertaken by other police jurisdictions in to incident command, operational skills training and use of force.<sup>195</sup>.

These issues include -

- training in operational skills and incident command is siloed and the procedures and policies are fragmented and spread across several policies;
- That the clarity, awareness and prominence of the organisations use of force philosophy has been diluted and lost due to the current wording of the philosophy and the increasing volume and complexity of policy and procedures.
- there is little guidance provided to officers in training or in policy on de-escalation, containment, cordon, or tactical withdrawal, and perhaps more importantly how an officer is to achieve these states.
- The model, guiding policy and procedures, although effective, tend to focus on the point of engagement with a subject with little emphasis on planning the approach.
- That OSTT training has a greater emphasis on UOF options (baton, taser, empty handed techniques) at the point of crisis and immediately before the use of force, rather than consideration of and training in more peaceable conflict resolution skills and options and non-aggressive tactical communication.

When considering the above in the context of the Yuendumu incident, the issues are easily identified.

### Considerations

To address the above issues, it is recommended that NTPF consider

- Changing the current philosophy statement of - *The success of an operation will be primarily judged to the extent to which use of force is avoided or minimised, to "police officers should use the minimum amount of force necessary to resolve an incident"* which promotes non-physical resolution, and use of communication and conflict resolution tactics.
- All relevant use of force, incident management, and operational safety policy and procedures are integrated in to one single cohesive document to emphasise the important connection between planning and response to an incident and providing officers with one policy and 'source of truth' to locate the information when required.

<sup>195</sup> Refer Final Report – QPS Violent Confrontations Review – Folder 66 Folio 1 and <https://www.police.qld.gov.au/sites/default/files/2018-12/QPS%20Violent%20Confrontations%20Review.pdf>

- That training has a greater emphasis on de-escalation by providing guidance to officers on how they can achieve states of containment, cordon or tactical withdrawal.
- The development of an integrated training model and all-encompassing UOF curricula that incorporates OSTT, Incident Command and negotiation / conflict resolution skills, at all rank levels to remove the current 'siloed' delivery of training.

## Use of Force Reporting

In relation reporting on Use of Force (UOF), The Northern Territory Police Instruction – *Operational Safety and Use of Force* provides guidance on use of force reporting, how UOF data can be utilised, criteria for reporting on UOF , member responsibilities, case officer responsibilities, supervisor responsibilities and Senior Sergeant responsibilities

### *Management and Use of UOF Information*

The NTPF maintains a system that stores information on all incidents where force was used by or against members to:

- identify training needs for operational safety purposes;
- monitor the effectiveness of operational training, tactics, procedures and equipment to ensure appropriate behaviour; and
- Monitor use of force trends in the best interests of the public and operational members.

The instruction further advises that as part of the process of monitoring and evaluating the use of force, police organisations should maintain governance structures to enable the collection of information regarding circumstances where force has been used.

The value of reporting, recording, monitoring and evaluating use of force applications includes:

- provision of a profile on the means adopted by members to resolve violent or potentially violent incidents including critical, physical and low risk incidents;
- ability to examine police conduct in conflict situations to assist in identifying any weaknesses, strengths or risk areas and recommend improved practices; and;
- collection and examination of relevant factors including behavioural, cultural, and demographic profiles of offenders.

### *Criteria for Reporting*

The *Operational Safety and Use of Force Instruction*, details that there are three (3) occasions where a UOF Case Note Entry (CNE) **must** be submitted, they are:

**Use of force by members** including any situation where, in response to an actual or perceived immediate physical threat, members:

- use or draw a firearm (including all animal destruction);

- use a baton;
- use ASR or other chemical spray;
- use any weapon, instrument or implement (including vehicles);
- use any empty hand tactic, hold (except escort holds where otherwise excluded), blow, punch, kick, block and restraint or similar tactic;
- use an ECD, including:
  - a. drawing the ECD from the holster and warning that an ECD may be used;
  - b. activating the laser on a subject as a further warning ('laser painting');
  - c. arcing between the contacts on the body of the ECD as a further warning;
  - d. direct contact by 'drive stun' to a part of the person's body without discharging the probes, to achieve a localised effect. Where there is no time to remove the cartridge it may be necessary to fire the cartridge into the person at close or contact range. In such circumstances the use constitutes a 'direct contact' and a 'firing'; or
  - e. firing the probes into a person's body or clothing or attempting to;
- use of handcuffs or similar restraint, except where otherwise excluded;
- use of a police dog or horse to directly apply force;
- injury caused by the use of police dog or horse; and
- use of a TDD (Tyre Deflation Device)

**Use of force against members** includes any situation where members are:

- physically assaulted whether or not an injury results from that assault; and/or
- injured whilst attempting to subdue, contain or control another.

**Use of force in other situations** includes where members with lawful authority or otherwise:

- force entry to a building, vehicle, vessel or other secured area to search, seize or arrest;
- forcibly remove a person's clothing where reasonable grounds to believe exist that the removal and examination and detention of such clothing may afford evidence of the commission of an offence;
- forcibly remove a person's clothing where reasonable grounds to believe exist that the removal of the clothing is for the safety of the person or others whilst in lawful custody; and/or
- forcibly obtain samples of non-intimate, intimate, or identifying materials required as evidence.

There are circumstances where the requirement for a UOF CNE is exempted and is not required, these are:

- handcuffs are used in the case of prisoner escorts or transport;
- handcuffs are used to safely search a person;
- to assist a person who is otherwise unable to stand or walk without assistance; or
- for simple escort holds of a cooperative person (single-handed escort, two-handed blanket hold, two-handed escort, and 2-on-1 escort holds). Any other type of hold would be a restraint and a Use of Force CNE is to be submitted.

The instruction also provides clear guidance and direction to police members in regard to their responsibilities when completing, reviewing and auditing UOF CNE's.

### *Member responsibilities*

- Full and accurate information is required when completing a Use of Force CNE.
- Where an incident involves use of force against more than one (1) person in clearly distinct and unrelated circumstances, a separate Use of Force CNE is to be entered for each unique use of force on each person. Should a single use of force affect more than one (1) person (e.g. a single application of ASR upon multiple persons) then only one (1) CNE is required.

### *Case officer responsibilities*

- The Use of Force CNE is required to be completed and uploaded prior to the end of the member's shift. Upon completion of the CNE, the case officer is to create a tasking for the attention of the relevant supervisor requesting that they review the case, including the Use of Force CNE.
- Narrative of incident: In this free text area members should provide details sufficient to clarify any issues that may be raised by Divisional Officers. Brief comments only are required in relation to injuries sustained by persons and members in this area. Full details including after-care provided should be included in the specific subject and member injuries section. This injuries section does not remove the requirement for members to complete required injury on duty documentation.
- Other members involved field: is for completing details of those participating members not already recorded under sections detailing use of handcuffs, baton, chemical agent, ECD or firearm.

### *Supervisor responsibilities*

It is the responsibility of the supervisor to ensure that where force has been used:

- the members involved appropriately complete the Use of Force CNE on the relevant case management system prior to the end of the shift; and
- audit the force used by the members to determine whether the force used was reasonable, necessary, proportionate, and appropriate to the circumstances.
- It is the responsibility of the supervisor to check the Use of Force CNE is completed satisfactorily and that the case provides enough detail. Once satisfied that it has been completed properly, they are to complete the task.
- Where the CNE is found to be deficient, the responsible supervisor will ensure the relevant members correct such deficiencies prior to the job being finalised.
- The supervisor details comments section is to be completed including issues that the supervisor believes need to be brought to the attention of the relevant Senior Sergeant, if any.
- For any identified issues requiring the attention of the Senior Sergeant, a task is to be sent requesting that the Senior Sergeant review the case, including the Use of Force CNE.

### *Senior Sergeant Responsibilities*

- Once the Senior Sergeant is tasked to review a case, including a Use of Force CNE, it is their responsibility to check the Use of Force CNE is completed satisfactorily and that the

case provides enough detail. Once satisfied that it has been completed properly, they are then to complete the task.

## Comments and Considerations

As detailed earlier in this report, the career review of Rolfe highlights a number of concerning issues in relation to Rolfe and behaviours exhibited while performing his duties as a police officer and also while off duty.

Of an even greater concern is the absence of systems to identify these behaviours and where systems were in existence the failure of those systems to provide any form of intervention

The review of Rolfe's 'Use of Force' involvements identified 5 occasions (from the 46 recorded 'Use of Force' incidents) where Rolfe had used force that was assessed as not '*reasonable, necessary, proportionate and appropriate*'.

This review also highlighted a lack of any detailed review by the supervisors of Rolfe during these 'Use of Force' episodes as required by the provisions of the General Order which are replicated above.

The review of these matters also revealed that the requirement for a mandatory 'Custody and Illness Injury Report' (CIIR) to be submitted on the PROMIS Case by the senior attending member had also not been completed. Only PROMIS 8391540 had a CIIR submitted in addition to the Use of Force report.

A CiiR is required when a person receives an injury or receives medical treatment while in custody in accordance with the General Order – *Custody and Transport*. Once submitted the CiiR is subject to review by the Divisional Superintendent to ensure the member/s acted appropriately and in accordance with training, education, and policy.

Further evidence of Rolfe's behavioural concerns comes from the information provided in the statutory declaration of Detective Superintendent Virginia Read, Ethics and Integrity Division, Professional Standards Command<sup>196</sup>.

In her capacity she managed the 'Complaints Against Police' reports and noted that Rolfe was repeatedly engaging in concerning behaviour, including not operating his BWV. She had cause to meet or otherwise discuss issues pertaining to Rolfe's alleged inappropriate behaviours with the Alice Springs 'Command Management Team' (CMT) on at least 3 occasions.

Superintendent Read noted Constable Rolfe's non-adherence to the existing BWV policy and his failure to activate his BWV during 'use of force' episodes. No record of any action taken by the Alice Springs supervisors is recorded in the minutes of the Alice Springs Command Management Team meetings held in June, July, or October 2019 when these issues were directly raised by Detective Superintendent Read. A check of 'blue team records'<sup>197</sup> and Rolfe's MyCareer<sup>198</sup> profile also shows no evidence or indication of any action being taken.

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<sup>196</sup> Refer Statutory Declaration – Superintendent Virginia Read : Folder 48 Folio 112

<sup>197</sup> Blue Team is a component of the IAPRO system used by Professional Standards Command. When a complaint against police or an internal matter requires some form of PSC notification or oversight an entry or job is created in "blue Team".

<sup>198</sup> MyCareer is the career management system used by NTPFES. It is an IT system that requires supervisors to engage with their members to assist in career development. They system is used to enter commentary in relation to a

The absence of appropriate supervisor audits, submission of CIIR's and any meaningful intervention or action on highlights a number of systemic failures in the reporting and auditing of police use of force.

Some of these failures can be attributed to:

- The current process by which Use of Force Audits are undertaken which is detailed in the *Police General Order and Instruction: Operational Safety and the Use of Force* which only requires a supervisor to make a subjective assessment of the force used against the criteria of the force being reasonable, necessary, proportionate and appropriate in the circumstances and not consider the circumstances leading up to the Use of Force and whether the 10 safety principles, ICENCIRE or other Use of Force Options were considered by the member.
- The number of supervisors at the rank of Sergeant or Senior Sergeant who are undertake these reviews. As highlighted in the review of Rolfe, from December 2016 to November 2019, Rolfe had 17 different supervisors at the rank of Sergeant or Acting Sergeant and 13 at the rank of Senior Sergeant or Acting Senior Sergeant.
- The training, experience and willingness of supervisors and managers to address poor performance or behaviours which can lead to inconsistencies in how procedures are undertaken. This is highlighted in the career review. On 13 occasions Rolfe failed to activate his BWV, however only on 6 of these 13 occasions was he spoken to by a supervisor or manager in relation to failing to comply with departmental policy and procedure, and this was only in the form of verbal / remedial guidance
- The inconsistent and ad-hoc manner in which the Northern Territory Police reviews its Use of Force, information to:
  - identify training needs for operational safety purposes;
  - monitor the effectiveness of operational training, tactics, procedures and equipment to ensure appropriate behaviour; and
  - Monitor use of force trends in the best interests of the public and operational members.

Currently there is no specific section, resource or governance structure (other than what is information can be recovered from PROMIS) that enables 'use of force' submissions to be monitored or evaluated as suggested in paragraphs 23.2, 23.3 and 24 of the General Order.

However, the largest contributing factor to the identified systemic failures is the absence of an 'early intervention system' to enable the early identification of officers who are engaging in or demonstrating behaviours that are not appropriate or expected from an officer in the Northern Territory Police.

The case management system currently utilised by the Police Standards Command, IPro, has the capability to be utilised as an early intervention tool, however it is hampered by the volume of disparate IT systems from which data and information would need to be obtained. A further compounding factor is the human resourcing to obtain, analyse and report on the information to enable early identification and intervention to occur.

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members development, examples of good or positive actions / behaviours and also examples of behaviour that is poor or requires remedial or rectifying action.

Had such a program been in place it would have clearly identified the escalation in Rolfe's 'use of force' involvements and triggered a more meaningful managerial response.

### Considerations

NTPFES should consider

- Reviewing the current process and procedures for use of force reporting and assessment, by expanding the current assessment of force being reasonable, necessary, proportionate, and appropriate in the circumstances through the provision of specific criteria guidance to supervisors and managers of how use of force should be assessed. (For example, did the officers consider and apply the 10 operational safety principles and ICENCIRE, was there an opportunity for use of a tactical option other than that used by the member).
- the development of a capability and system that enables Use of Force information to be used for
  - Identify training needs for operational safety purposes.
  - monitor the effectiveness of operational training, tactics, procedures and equipment to ensure appropriate behaviour; and
  - Monitor use of force trends in the best interests of the public and operational members.
- Reviews its current policies, procedures, and legislative provisions in relation to managing and rectifying inappropriate workplace behaviour, with a view to enabling, encouraging and empowering supervisors to take responsibility for appropriate action that is appropriate and commensurate with their level of rank.
- the development and implementation of an 'early intervention' model and capability that utilises various data sources to assist in the early identification, intervention, and correction of inappropriate workplace behaviour.

## Command and Control

Command in the traditional policing sense is the authority by which a member of the police force lawfully exercises command over other members by virtue of their position, rank, or appointment.

Command provides a line of responsibility for all members and includes the authority for the effective and efficient use of police resources. It also includes the responsibility and authority for the planning, co-ordination, and execution of police operations.

The Northern Territory Police has numerous policies and procedures that relate to or reference the Command and Control which range from local standard operating procedures, to general to national arrangements and incident management frameworks.

In examining the concept of Command and Control in relation to the circumstances leading up to the death of Kumunjayi Walker, there are several systemic issues that demonstrate a failure in Command and Control, a failure to identify and consider risks at all levels, an absence of a clear chain of command / incident management structure and specific direction.

There were significant system failures in the processes, procedures and decision making to deploy the IRT to Yuendumu, these included confusion as to the mission IRT were tasked with, a lack of information and clear direction in verbal briefings, no establishment or direction as to chain of command or who was in charge, the absence of any detailed briefing / operations order prior to the deployment of the IRT.

A further compounding factor is the apparent disregard by IRT members of the chain of command on their arrival at Yuendumu, which was exacerbated by the absence of clear direction and tasking of each member in relation to their role and responsibilities of the plan that had been approved by Superintendent Nobbs.

These circumstances clearly identified:

- The absence of a uniform and consistent risk assessment and decision-making model that can be applied to an incident and assist in identifying risks, development of mitigation options and plans to resolve the incident.
- The absence of a uniform system in developing operational plans and promulgating clear and concise operations orders ;
- The absence of a uniform briefing process to ensure that all members involved have a clear understanding of the mission and their respective role in achieving the mission
- A failure to clearly identify the chain of Command and who was in charge
- The absence of an overarching incident management framework to support operation at the local level.
- A lack of training at the supervisor level in incident management, command and control and establishing an incident management / control framework

## Comments and Considerations

The issues identified in relation to Command and Control are similar to the issues identified in relation to Use of Force, detailed later in this report.

As highlighted, there are several policies that provide guidance on direction in relation to Command and control. The majority of these policies relate to the development and management of an incident control system / framework (to assist in managing complex incidents) or relate to the command and control functions of specialised units such as TRG or Major Crime.

A review of policy reveals that there is no one specific General Order or Instruction relating to Command. Further research shows that the previous General Order relating to Command had been revoked in 2014, when the NTPF undertook a rationalisation of its General Orders and moved to a values-based approach to management, policy and procedure.

Inquiries with the NTPFES college also indicate that incident management / command and control training provided at the Sergeant / Supervisor level is primarily focused around training members in the Australasian Inter-Service Incident Management System, which is a common management framework for all hazards and primarily used in Emergency Management responses.

The PFES College is currently developing a training package in relation to ICCS+ which is an incident management framework developed through ANZPAA and endorsed by all Commissioners of Police and is specific to the police management of incidents.

## Considerations

NTPFES should consider

- All relevant command and control policy and procedures being integrated in to one single cohesive document to emphasise the important connection between Command and Control, planning and response to an incident and providing officers with one policy and 'source of truth' to locate the information when required.
- The development of uniform and consistent operational risk assessment, operation orders and operation briefing templates across the NTPF
- The implementation of ICCS+ as the incident management framework for police specific incidents that do not have an emergency management aspect, (e.g. armed offender, arrest of violent offender).
- The development of a training package for all police at a supervisor level in the concept of command and control, the chain of command structure, and their role and responsibilities as a person in command.
- Updating and reintroducing the General Order Command, to provide clear and concise direction to police members at all ranks around their rank responsibilities in the command structure and the role, function and importance of the chain of command.

## Initial Investigative Response

Northern Territory Police have 5 policies that provide guidance and directions on the procedures to be undertaken on report or discovery of a death in custody or serious injury resulting from police contact with the public. These policies are

1. *General Order – Death in Custody and Investigation of serious and or fatal incidents resulting from police contact with the public* (promulgated November 2011 to be reviewed November 2013 - updated September 2016 to reflect realignment of organisational structure) ;
2. *Instruction – Major Crime, Major Investigation and Critical Incident Response –* (promulgated November 2018 and to be reviewed November 2021).
3. *General Order – Coronial Investigations*
4. *General Order – Investigation Management Guidelines; and*
5. *Tri-Service – Northern Territory Incident Control System (NTICS)*

The investigate response to the shooting incident at Yuendumu was formulated under the auspices of these five policies.

### *Synopsis of the Initial Investigative Response*

On the evening of Saturday 9 November, on being advised of the shooting incident at Yuendumu, a team of Senior Police Officers (who were all attending a social function together) gathered to develop a response to the report of a member of the public being shot by police.

At 2049 hrs (8.49 pm) Acting Deputy Commissioner Michael White, declared the matter a critical incident and declared investigation in accordance with the instruction Major Crime, Major Investigation and Critical Incident Response.

Paragraph 26 of the instruction advises the following:

A Critical Incident may include any matter where members are involved in the death (death in police custody) or serious injury of a member of the public resulting from contact with police (serious custody incident).

- arising from the discharge of a firearm by police;
- arising from the use of accoutrements or the application of physical force by police;
- arising from a pursuit or from a collision involving a police vehicle;
- who was in police custody at the time; or
- arising from a police operation such as:
  - any police operation calculated to apprehend a person(s);
  - any police siege or operation to contain or restrain persons;
  - any police shooting;
  - a high-speed motor vehicle pursuit;
  - an evacuation.
  - a traffic control / enforcement or roadblock; or
  - any other circumstance considered applicable by the NT Coroner, CoP or DCoP.

The Senior Officers initially allocated the investigation functions<sup>199</sup> were Acting Assistant Commissioner Travis Wurst (Commissioner Officer in charge of the investigation and response), Acting Commander Martin Dole, and Superintendent Jo Foley.

Superintendent Foley was the Detective Superintendent of the Alice Springs Regional Crime Division and was allocated the role of the Senior Investigator in Charge, with officers from the Southern Crime Regional Investigations Division tasked with the initial investigative response.

Supt Foley contacted Detective A/Senior Sergeant Leith Phillips and advised him of the incident at Yuendumu, informed him that he was the Senior Investigating Officer in charge of the initial investigative response and that a team of investigators was to be deployed from Alice Springs.

Phillips contacted the following investigators: Detective Sergeant Deanne Ward, Detective Senior Constable Greg Keane, Detective Senior Constable Jack Raitt and Plain Clothes Constable Ben Powell and advised them of their requirement to deploy to Yuendumu.

Prior to their deployment to Yuendumu, Phillips briefed the investigators on the circumstances as known, and emphasised the importance of ensuring, as far as possible in the circumstances, that the police officers directly involved were separated until their version of events had been obtained (as per the General Order "Deaths in Custody and Investigation of Serious Incidents"); that they were to secure all BWV footage from all members involved in the shooting, that all member versions were to be recorded in an audio visual format or at least the audio recorded statutory declarations.

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<sup>199</sup> The command structure put in place used the NTICS structure, where Investigations is one of the functions that make up the incident response.

Phillips also advised that the versions of the IRT officers including the dog handler (SC Donaldson) were to be officer versions without much clarification, Phillips instructed the investigators to obtain as much detail as possible from the officers in 'free recall' and that more detailed statements / interviews could be obtained once more information / evidence had been gathered and a clearer appreciation of the incident had been obtained.

In addition to the above, arrangements had already been put in place for Investigators from Darwin to travel to Alice Springs on 10 November and support Alice Springs investigators in accordance with the Major Crime, Major Investigation and Critical Incident Response Instruction.

At around 9.45 pm, Alice Springs investigators and a crime scene examiner departed for Yuendumu arriving at 2.30 am on the morning of Sunday 10 November<sup>200</sup>. On arrival investigators made arrangements to undertake initial interviews with the IRT members and the Dog Operations Unit member who had been deployed to Yuendumu. A statement was unable to be obtained from Rolfe as he had returned to Alice Springs by plane.

The investigation team attended and established a crime scene at house 511 Yuendumu and also commenced identifying witnesses, prior to standing down to at 12 mid-day for 2 hours to get some rest and respite.

On Sunday 10 November, Acting Detective Superintendent Kirk Pennuto (Pennuto) assumed the role of Senior Investigator in Charge (SIC) taking over from Detective Superintendent Foley<sup>201</sup>.

The management structure of the investigation going forward was as detailed in the sketch below<sup>202</sup>, with the SIO (Pennuto) and the Deputy SIO (Malogorski) operating from Darwin with a team from the crime command and members from the crime command located in Alice Springs coordinating investigative activities on the ground.

On that same day, the Alice Springs investigation team viewed the footage from the BWV of Rolfe, later that day the footage was also viewed by Pennuto and Malogorski at 3 p.m.

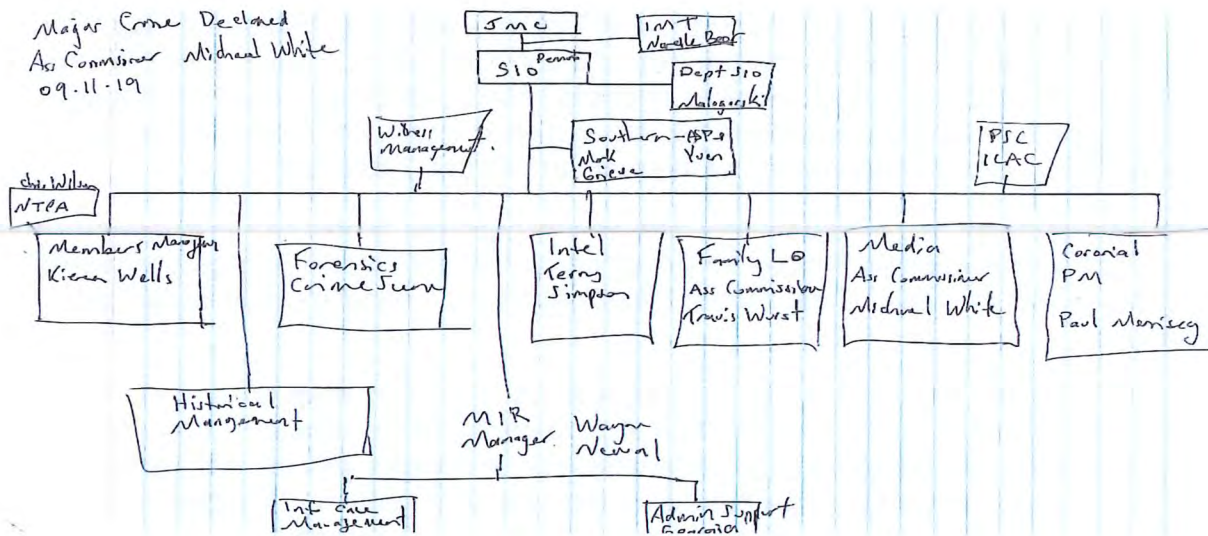
At 5 p.m. the first Investigation Management Committee (IMC) meeting was held in Darwin, chaired by A/DCOP White. During this meeting a critical decision was made that any interview with Rolfe was to be conducted under formal caution.

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<sup>200</sup> Refer Statements Det Sgt Deanne Ward – Folder 49 Folio 131

<sup>201</sup> This decision was prompted by concerns raised by the Coroner and Deputy Coroner, in relation to the independence and integrity of the investigation if the investigation was to be undertaken by investigators from Alice Springs Regional Investigations and not Investigators from Major Crime.

<sup>202</sup> Refer Detective Senior Sergeant Malogorski – Rough Notes – Folder 46 Folio 89



On Monday 11 November a meeting was held between Det A/Supt Pennuto, Commander Dole, and Assistant Commissioner Anticich met with the Jack Karczewski QC, Director of Public Prosecutions and Matt Nathan SC, Deputy Director. During this meeting the BWV of Rolfe was viewed, and a criminal offence suggested. A 'short file' was requested by 13/11/19 to enable the DPP to consider and confirm an opinion in relation to possible charges.

On Tuesday 12 November 2019, Superintendent Scott Pollock was appointed as Commissioned Officer in Charge of the Coronial Investigation, by Acting Deputy Commissioner White<sup>203</sup>. This decision saw the investigative response now separate in to two divisions, one focusing on the criminal elements of the investigation and one on the coronial elements of the investigation.

On Wednesday 13 November 2019, a follow up meeting between Det A/Supt Pennuto, Commander Dole, Assistant Commissioner Anticich and the DPP (Karczewski and Nathan). At this meeting a charge of murder was recommended to police.

At 5 p.m. that same day Rolfe was arrested by Det A/Supt Pennuto for the offence of murder. At 6.47 p.m., Rolfe was formally charged with murder and granted conditional Bail by Local Court Judge Birch.

## Comments and Considerations

The review of the initial investigative response highlighted several areas where systems policies and systems in place could be improved or were found to be deficient or absent.

### Policy

The initial investigative response to the shooting death of Kumanjaya Walker, as previously stated, was conducted under the 5 policies that guided the investigative response. A review of these policies, determined the following:

<sup>203</sup> This decision is believed to have been prompted by a request from the coroner that the investigation of coronial issues should be run in parallel with the criminal investigation, however, should be conducted separately.

#### 1. General Order - *Investigation Management Guidelines*

The guidelines establish investigative responsibility for all crime types. The 'guidelines' were due to reviewed and updated by 15 January 2015 with 'ownership' of the General Order resting with the Commander Crime. The review of these guidelines is yet to occur.

In accordance with the guidelines a 'Death In Custody' investigation is determined by the Deputy Commissioner with Professional Standards Command oversight<sup>204</sup>. This General Order is aligned to the '*Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public*' and remains current with the exception of determining which Deputy Commissioner is responsible for allocating a 'Death In Custody' investigation.

#### 2. General Order – *Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public*

This General Order was due to be reviewed by 9 November 2012 (It was partially amended on 8 September 2016 to reflect the 'Structure Realignment that occurred at that time) with the responsible owner of the policy being the Commander Crime. The responsibilities of rank mentioned in this General Order are now out of date.

The General Order only allows for one 'Commissioned Officer In Charge'. For the investigation into the death of Kumanjayi Walker, 2 Commissioned Officers In Charge were appointed – one managing the coronial response and the other the investigative response.

The General Order does not contain directions to investigators arising from recommendations previously made by the Coroner. The 'Risk and Audit' management team are responsible for the oversight of coronial recommendations and ensuring that the relevant owner of the General Orders update the policy in a timely manner. This clearly has not been occurring on all occasions.

#### 3. General Order – *Coronial Investigations and Inquests*

This General Order was due to be reviewed by 4 December 2017 and the Commander Crime is responsible for this General Order.

Issues were experienced with compliance requirements of the General Order during the investigation as the investigation was 'locked down' issues arising during the investigation were not shared with either the Divisional Superintendent (Superintendent Nobbs) responsible for the management of the remote stations or the Assistant Commissioner responsible for Southern Command (Dr Narelle Beer).

The initial IMC (later to become the Joint Management Committee – JMC) - did not share all information with the IMT. Given the investigation was protracted the sharing of critical information and the requirement for urgent remedial action, as stipulated by this General Order, did not occur in a timely manner.

#### 4. Instruction - *Major Crime, Major Investigation and Critical Incident Response*

<sup>204</sup> There are now 2 Deputy Commissioner's – one responsible for 'Territory Operations and Road Safety' and the other responsible for 'People, Crime and Capability'.

This policy instruction replaced the Major Crime Plan on 15 November 2018. The policy owner is listed as the Commander Crime and is not due for review until 15 November 2021.

The policy has no definition of what constitutes a 'Critical Incident'. The naming conventions do not align with other policies and assigned roles and structure became confused during the criminal investigation as the response to the death of Kumanjaya Walker adopted protocols under both the *Major Crime, Major Investigation and Critical Incident Response* and the *Northern Territory Incident Control System (NTCIR)* framework.

Each mandate a response to a 'critical incident' (including a major crime response). Each have a different nomenclature for roles assumed during a response to a critical incident.

This confusion resulted in key requirements of the General Order – Death in Custody and Investigation of Serious Incidents and or Fatal Incidents Resulting from Police Contact with the public, not being undertaken. Specifically, the requirement for a Senior Officer to issue a direction for officers involved in the incident to be separated and not confer, was not given.

In addition to this confusion the 'Investigation Management Committee' and the 'Incident Management Team' titles were added into the management response to the criminal investigation.

The Instruction - *Major Crime, Major Investigation and Critical Incident Response* does not specifically state what case management system is to be utilised but states;

*All documents or materials relating to a DI are to be collected, filed and managed in accordance with the relevant case management system. If alternative recording is required i.e. outside of the standard case management system, the JMC is to make this determination. There is to be the one (1) source of truth for all collected information, evidence and data<sup>205</sup>.*

Throughout the Operation Charwell investigation information was recorded both on the PROMIS Case Management System and the 'L Drive' shared file by the Operation Charwell investigation team. The 'L Drive' is not regarded as an appropriate case management system as it can be easily edited and has a limited audit function.

#### 5 Tri-service – Northern Territory Incident Control System

Following the death of Kumanjaya Walker, the Commissioner of Police released a broadcast on 11 December 2019;

*When responding to a critical incident or when planning any type of police led operation Northern Territory Police members will utilise the Northern Territory Incident Control System (NTICS).*

The NTICS is currently outdated and is to be replaced by the Incident Command and Control System + (ICCS+) at a future date<sup>206</sup>. Consideration is required in order to transition the overarching ICCS+ to synchronise with existing local investigation policies.

The current case management system used by police, PROMIS, is scheduled to be replaced by SerPRO in a roll-out commencing from 2021.<sup>207</sup> The NTICS case management system

<sup>205</sup> Paragraph 109 – Instruction – *Major Crime, Major Investigation and Critical Incident Response* Folder 23 Folio 6

<sup>206</sup> NTICS last updated July 2011.

<sup>207</sup> Northern Command (Katherine and district stations) will be the first to trial SerPRO.

'WebEOC' is regarded as an unsuitable case management system primarily for security reasons and its primary function being Emergency Management events.

As PROMIS is now due to be replaced commencing from 2021 it is recommended that the PROMIS replacement, SerPRO, develop a secure case management system. That is suitable for investigations and is able to reflect the principles of ICCS+/-

### *Selection of Senior Investigating Officer and Investigation Team*

As highlighted in the Instruction - *Major Crime, Major Investigation and Critical Incident Response*, in 2018 the Coroner made two recommendations to ensure that all investigations are completed to the highest standard.

The specific recommendations were:

*That the Commissioner of Police do all things necessary to ensure that those that investigate major offences have the appropriate skill, experience and resources to undertake the investigations to which they are tasked; and*

*That the Commissioner of Police do all things necessary to ensure that senior police undertake their roles in facilitating, supervising, and providing governance in relation to all major investigations.*

Although the instruction references the above recommendations, it is noted that the instruction contains no guidance, process, or criteria for how an SIO should be identified / selected or how members of an investigative team should be identified and selected to ensure the requirements of the coroners recommendations are met.

The SIO selected for the investigation into the shooting death of Kumunjayi Walker, was Acting Superintendent Kirk Pennuto. An examination of Acting Superintendent Pennuto provides the following evidence of his experience in criminal investigations.

*Detective A/Supt Kirk Pennuto joined the Northern Territory Police in October 2011, having previously served 17 years and 7 months in the Victoria Police.*

*A review of Pennuto's service history with Victoria Police reveals that he commenced employment with Victoria Police on 7 March 1994 and graduated from the Victoria Police Academy on 22 July 1994.*

*From July 1994 to June 2000, Pennuto served in a number of stations across Victoria undertaking general duties, traffic duties, plain clothes patrols and length secondments to Criminal Investigation Branch areas as a plain clothes investigator.*

*From June 2001 to January 2006, Pennuto served in Criminal Investigation Branch areas. From January 2006 to October 2009 Pennuto served in the Victoria Police Homicide Squad Crime department, during this period he was also seconded for a 3-month period to Taskforce Phoenix (the investigation in to the Black Saturday Bushfires). From January 2011 to October 2011, Pennuto served as a Detective Sergeant in the greater Dandenong CIB prior to resigning from Victoria Police to join the Northern Territory Police.*

*During his service with Victoria Police, Pennuto was the lead investigator or investigation manager in to a number of high profile investigations , which included offences of extortion and violent assaults within Melbourne's Vietnamese community, a protracted investigation in to the shooting of 3 people at an inner city Melbourne restaurant, a protracted investigation in to the stabbing murder of two elderly Sri Lankan tourists by their son and a protracted investigation in to the brutal murder of an elderly woman on a Melbourne beach.*

*In addition to his operational experience, Pennuto has also obtained a Bachelor of Policing (investigations), an Advanced Diploma of Investigation and has completed the following Victoria Police courses relevant to criminal investigations: Field Investigation Course (1999), Detective Training Course (2002), Human Source Management Level 2(2005), and Brief (of evidence) Management Course(2009).*

*Detective A/Supt Pennuto joined the Northern Territory Police in October 2011, he completed an accelerated recruitment program and on graduation from the college took up positions in general duties, Darwin.*

*Since 2011, Pennuto has undertaken the following positions and duties relevant to criminal investigations.*

- *Sergeant Internal Investigations Division*
- *Senior Sergeant Internal Investigations Division*
- *Senior Sergeant Special References Unit*
- *Senior Sergeant Crime*
- *A/Supt Crime (Operation Charwell)*

The above information has not been collected to make an assessment as to whether A/Superintendent should or should not have been nominated as an SIO. It is provided to demonstrate the level of experience that an officer should be required to demonstrate to be considered or selected for an SIO role.

### *Investigation Management Structure*

The investigation into the death of Kumanjayi Walker is a unique circumstance for the Northern Territory Police. The investigation structure established two investigative streams, being the criminal and coronial, to run parallel to one another, and to investigate the same incident, to obtain information and evidence from the same witnesses, crime scenes and interviews, one through the lens of creating a criminal prosecution case, the other through the lens of preparing a coronial file for the coroner that critically examined systems, and processes and whether those systems contributed or could have prevented the death of Kumanjayi Walker.

This unique circumstance resulted in the creation of two Commissioned Officers in charge to manage each investigative stream (something not covered by existing policy and procedure). This made the determining of priorities, sharing of information and de-confliction between the investigation streams difficult at times, with the criminal investigation having primacy over the coronial investigation.

It also raised concerns as to the role of the coronial investigation, its scope and parameters, which at times created a misconception that the coronial investigation was “reviewing and undermining the work of the criminal investigation team and jeopardising the integrity of the criminal investigation.

This was evidence through the investigation when on a number of occasions the coronial investigation was directed to cease its inquiries in certain areas or was criticised when it identified issues that were of concern and possibly detrimental to both investigative streams.

The concept of having two investigative streams working at the same time challenged patterns of behaviour that investigators had been committed to and that had been tried and tested in the past and created a challenging environment.

The issues experienced, highlighted the importance of an investigation management structure that created the position of a Senior Commissioned Officer in Overall Command, which sat above the Commissioned officers in charge to provide oversight, strategic direction, ensure independence and provide de-confliction on the occasions where the investigative streams conflicted on certain issues.

#### Considerations

To address the issues identified, NTPFES should consider

- All relevant investigation policy and procedures are amended, and then integrated in to one single cohesive document to provide consistency in the investigative response to an incident and providing officers with one policy and 'source of truth' to locate the information when required.
- That as part of the integration of existing policy and procedure a critical assessment is undertaken of the various teams and committee structures that have been introduced (e.g. JMC, IMC) to ensure that their role is clearly defined and is achieving its purpose. (By way of example, the role of the JMC is to be strategic and not focus on the investigation as stated in the Major Crime Instruction - *The JMC should not be concerned about the general conduct of an investigation*).
- That any investigation where there is a requirement for two Senior Officers in Charge, has a Senior Officer in Overall Command established to provide oversight.
- That a robust process is established around the criteria for and selection of Senior Officers in Overall Command and Senior Officers in Charge of complex criminal and coronial investigations.

## Militarisation of Policing

Policing in Australia finds its foundation in the policing principles established by Sir Robert Peel and his commissioners in 1829. The three core ideas and nine principles remain as crucial and urgent today as they were two centuries ago, and can be found, albeit expressed in different ways, in the policies, procedures and mission statements of most police forces.

The Peelian principles have a strong focus on 'policing by consent', respecting community principles and obtaining the support and trust of the community. They also have a strong focus around the use of force by police and the use only of minimum force necessary for achieving a police objective.

Police and the communities they serve have an unspoken contract. To serve and protect and to maintain peace and wellbeing, police are given authorisation to use coercive and lethal force in certain circumstances. With this authorisation comes an expectation that police will be accountable for the exercise of that authorisation.

Recent events overseas and have caused communities in overseas countries and also in Australia to question this 'contract' and to examine how current polices may have contributed

to these events. A policy that has been called in to question, particularly in the USA, is the overt militarisation of policing (Close:2020).

Close (2020)<sup>208</sup> observes the process of militarisation starts with the recruitment of ex-military personnel. In the USA policy initiatives have been implemented and recruitment processes introduced to attract and actively recruit former military personnel into their law enforcement agencies.

In Australia this has not been the case, recruitment standards are relatively consistent across Australia's states and territories, this approach assisted by the small number of police services, eight in total, and the large scale of those forces (Close:2020).

An examination of Northern Territory Police recruitment data shows that between January 2010 and May 2020 the Northern Territory Police recruited 718 members. Of the 718 recruits, 192 (26.74%) had previously served with the Australian Defence Force or foreign military forces. This is a significant representation of persons who have prior military service recruited to police the Northern Territory.

The recruitment of persons with former military service has often been seen by police as an asset for the same reasons that Policing has long been a favoured choice of career for those who have served in defence forces. In 2009 a study undertaken by the International Association of Police Chiefs<sup>209</sup> found that former defence personnel favour policing as a career choice as the training and skills they have developed during their defence service have strong synergies with policing, for example: use of firearms, physical conditioning, discipline and adherence to policy, critical incident response, training, tactical operations, and situational leadership.

However as Close (2020) observes, former military personnel bring important skills like teamwork, discipline and proficient use of weapons, but it's not easy for them to transition from 'warriors to guardians'<sup>210</sup>. Their training and experience embed a mindset that doesn't always align well with the requirements of community policing.

An area where the militarisation of policing has also increased in recent years is in the area of training, equipment, uniforms, and tactics. Perhaps the strongest example being, the decision by the Northern Territory Police, along with other police forces in Australia, to acquire military grade weapons for use as patrol rifles by its general duties police officers.

Accompanying the patrol rifle concept, has been training in "Active Shooter" scenarios, where the traditional policing practices of cordon and contain, are in certain circumstances, set aside in favour of active engagement of an armed offender. A role and function that historically was reserved for specialist tactical units,

The acquisition of military grade weapons, equipment and uniforms and training of police officers to actively engage an offender are not in line with the expectations of community-based policing philosophies.

However, the advent of terrorist activity internationally and within Australia has grown and has compelled police to upgrade weaponry and tactics in line with the expectation of the

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<sup>208</sup> Refer Close (2020) Militarisation of police in America and lessons for Australia: trust and legitimacy: [Militarisation of policing in America and lessons for Australia: trust and legitimacy | The Strategist \(aspistrategist.org.au\)](https://aspistrategist.org.au/militarisation-of-policing-in-america-and-lessons-for-australia-trust-and-legitimacy/)

<sup>209</sup> Refer IACP study – Employing returning combat veterans as law enforcement officers , <https://www.theiacp.org/projects/employing-returning-combat-veterans-as-law-enforcement-officers>

<sup>210</sup> Warriors to Guardians refers to the concept that the 'warrior' is someone who has the skill and courage to fight in battles, and that the guardian is someone or something that watches or protects".

community that police should be able to deal with and protect the community from such behaviour.

The transition of the Alice Springs Police 'Cordon and Containment Team' into the 'Immediate Response Team' in 2017 is an example of this expectation. Prior to the transition, the role of the Cordon and Containment Team focussed solely on the ICENCIRE principles, being to isolate, cordon and contain an incident until such time as a specialist unit arrived.

The rationale for the transition from the Cordon and Containment team to the IRT, was to develop a capacity in the unit / team, that enhanced the cordon and containment capability by enabling police in situations where normal negotiation and resolution tactics had failed and there was a risk to life and specialist support from sections such as TRG were unavailable or not able to attend in time, to utilise forced entry and close quarter contact training to resolve the situation.

As part of this transition the IRT adopted a para-military role focussing on weapons training and tactics involving 'green roles' (tactical observations in remote areas) and 'black roles' (tactical entry into strongholds – house clearing)<sup>211</sup>, over its previous role of cordon, containment and support.

Kraska (2007)<sup>212</sup>, observes that this is a common effect of the militarisation of policing, and that the effect occurs because the access to military equipment leads to a culture of militarisation over four dimensions: material, cultural, organisational, and operational. As militarisation seeps into their culture, police officers rely more on force to resolve situations, and are influenced by cognitive bias, described by Maslow (1966)<sup>213</sup> as the Law of the Instrument, whereby access to a certain tool increases the probability that the tool is used for problems when other tools may be more appropriate. Kraska (2007) also observes that police access to military equipment will lead to higher levels of aggregate police use of force.

In the context of the death of Kumunjayi Walker, the deployment of the IRT into Yuendumu armed with military type weaponry is an extreme example of this bias, particularly when they had been given the specific instruction to wear their regular uniform and did not consider taking a trained negotiator with them as part of their plan to arrest Kumunjayi Walker.

This bias is further evidenced in the actions of the IRT members carrying exposed weapons in a remote community without justification, what could be described as classic military type operation to locate a possible enemy or enemy threat, and the conversation Constable Eberl has with Leanne Oldfield when challenged about openly carrying a military style weapon around the community.

*Oldfield: Yeah, I'm just figuring out why you have a gun.*

*EBERL: Why we have a gun?*

*Oldfield: No, why he's got a gun.*

*EBERL: Oh, yeah, we all carry guns.*

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<sup>211</sup> Statutory Declaration of Lee Bauwens – 'Green Roles' & 'Black Roles' – P.19 – 22 Folder 39 Folio 11

<sup>212</sup> Kraska, PB (2007) Militarization and policing – its relevance to 21st century police. Policing 1(4): 501–513.

[Google Scholar](#)

<sup>213</sup> Maslow, AH (1966) The Psychology of Science: A Reconnaissance. New York, NY: Harper and Row.

Oldfield: Yeah, I know but he's like got it aimed to shoot someone.

EBERL: No, he's not aiming to shoot anyone, is he?

Oldfield: It's not right.

EBERL: Hey.

Oldfield: Stop it!

EBERL : We don't – we don't have a holster for that one so we have to carry it, so, someone probably shouldn't run at police with an axe, hey.

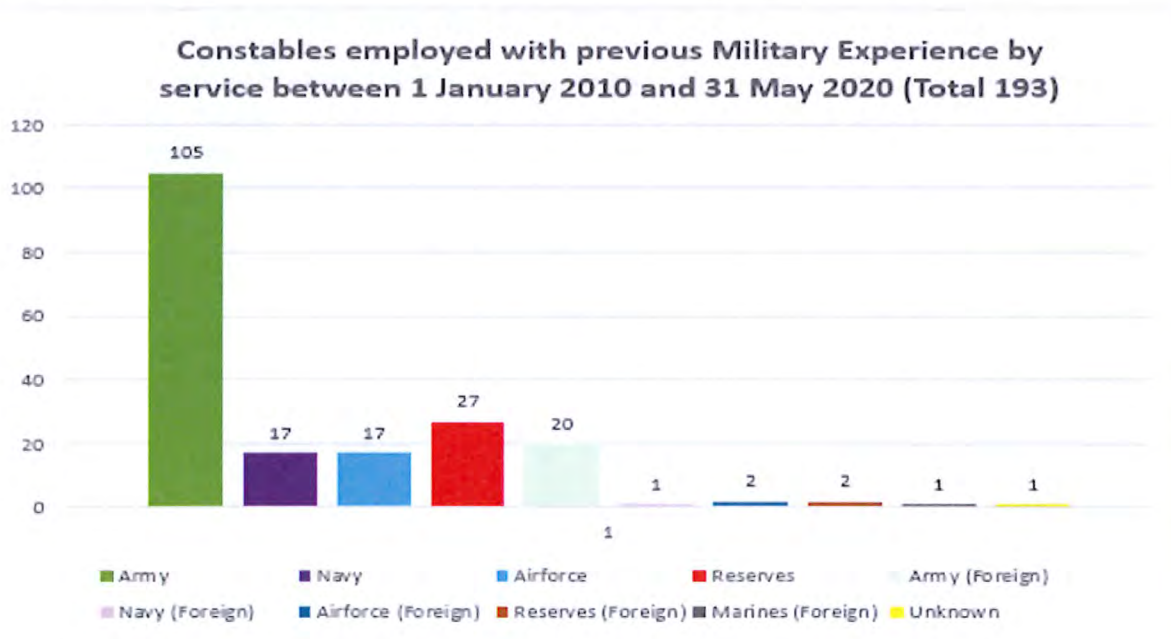
It is acknowledged that the IRT officers were, by their own admission, undertaking intelligence gathering activities in an attempt to identify the location of Kumunjayi Walker. However, there was no apparent justification for Police in Yuendumu to be carrying an exposed military type of weapon at the time, particularly in an area where women and children had gathered. There was no immediate threat to either the member or any other person in the vicinity. It is also relevant to note that all IRT members were carrying holstered weapons at the time.

The comment by Eberl, which includes the words '*...Someone probably shouldn't run at police with an axe, hey*'. is an entirely inappropriate comment and suggestive of a retaliatory policing response to the events that occurred the preceding Wednesday (6 November 2019).

The actions of carrying the exposed weapon and subsequent interaction with Oldfield again in regard to the IRT members, supports the observation of Kraska (2007) that police access to military equipment will lead to higher aggregate levels of police use of force.

As part of this investigation, the coronial team undertook an analysis of the Use of Force data of NTPF officers who had previous service with defence forces.

The graph on the following page provides a visual representation of the particular area of defence service Constables with previous military experience had served.

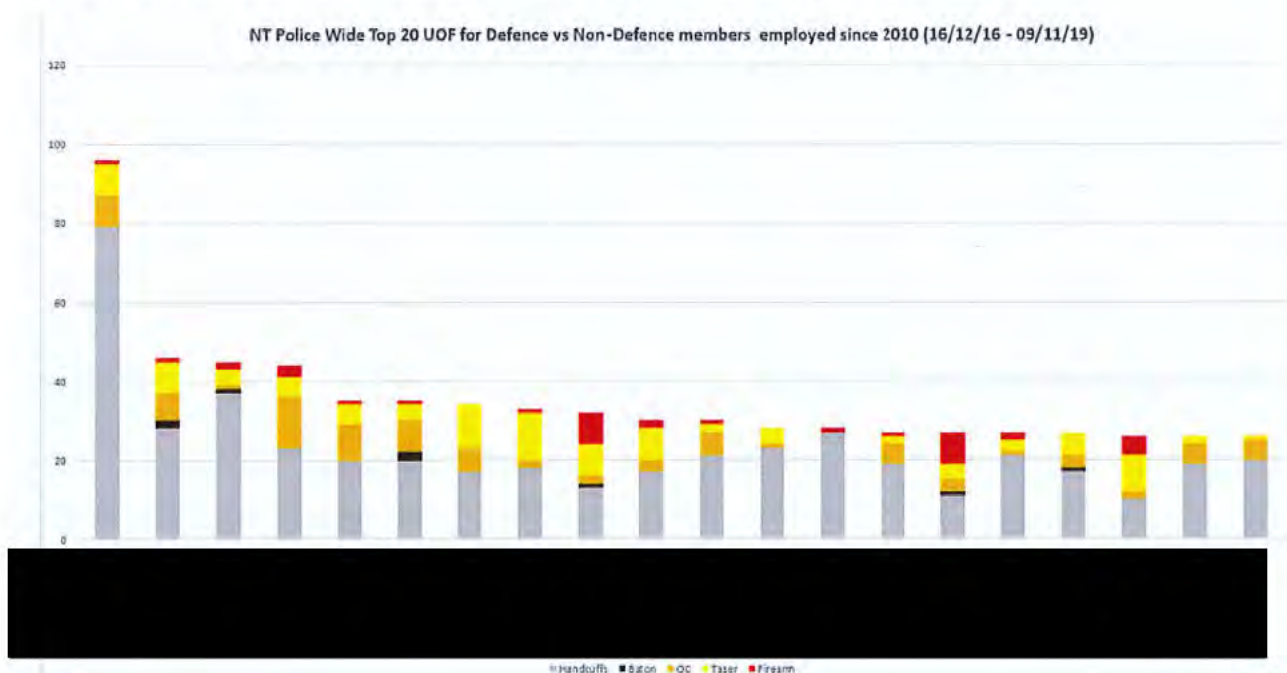


The table below shows accoutrement usage across UOF incidents recorded against groups of officers.

Group / Number of Incidents	Handcuff Usage	Baton Usage / Presentation	OC Usage / Presentation	Taser Usage / Presentation	Firearm Usage / Presentation
ROLFE (22)	54.55%	4.55%	22.73%	4.55%	13.64%
Organisational Average (6093)	62.76%	1.67%	11.05%	15.59%	8.93%
Non Defence (2582)	68.44%	1.90%	10.46%	12.94%	6.27%
Ex Defence (1037)	59.11%	1.25%	13.69%	15.53%	10.41%
Members of IRT (192)	67.71%	2.60%	11.98%	9.38%	8.33%
Squad 129 (252)	68.65%	0.79%	11.11%	13.49%	5.95%
45 Member Alice GD's sample (316)	66.77%	1.90%	12.97%	13.29%	5.06%
45 member Darwin Region GD's sample (647)	68.01%	0.62%	9.58%	17.16%	4.64%

Analysis of the data indicates that officers who have previous service with defence have higher presentations of OC Spray, Taser and Firearm in comparison to the other sample groups.

The following graphs provide a visual representation of officers with the top 20 number of use of force presentations, NT Police wide for defence and non-defence members. The data indicates that out of the top 20 members, only 5 have previous defence experience, and none of the 5 officers with defence experience appear in the top 8 members.



## Comments & Considerations

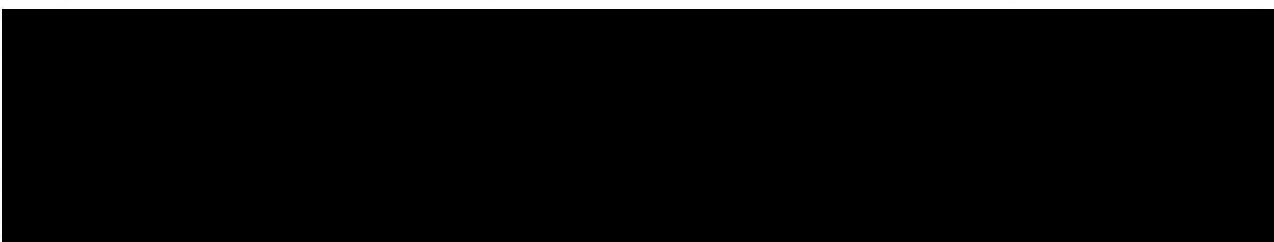
As part of this investigation, a critical analysis has been undertaken of the career of Rolfe, who himself was a former member of the Australian Defence Force, and the IRT which also has several ex-defence members in its establishment.

These reviews, when combined with the issues highlighted in the above paragraphs identifies a number of issues that require consideration by the Northern Territory Police.

Inquiries were undertaken with other Australian Police Forces to ascertain what if any processes, procedures, or specific training they had in place for recruits who had previous service with ADF.

Almost all jurisdictions advised that they had no specific training packages in place for recruits and that ex defence force members just undertook the normal recruiting program. Tasmania Police advised that, in their use of force training, they had a session that focused specifically on the difference between use of force and it authorising environment in a policing context, as opposed to the military environment and the importance of recruit officers understanding this difference and demonstrating in their operational duties.

Several jurisdictions, as part of their recruitment process were now requiring applicants to provide not only their defence force history, but also their defence force medical history, particularly where the applicant had served in an operational military environment. The request for this information to assist in identifying whether the applicants military service and experiences may have some impact on their capacity to undertake policing duties.



### Considerations

In addition to considerations identified in other areas of this report that are relevant to the militarisation of policing, the following points, specific to the militarisation are provided for consideration.

- That as part of the recruitment process, information requested for recruit applicants from ADF should also include their medical records.
- That the medical records and service history should be thoroughly reviewed as part of the recruitment process to identify any events that may have impacted on the applicant either physically or mentally during his defence service.
- That the OSTT unit, monitors the UOF data of ex-defence members to identify any concerning trends in Use of Force, and if necessary be in a position to undertake and early intervention to address the concern.
- That areas such as IRT and TRG , which are the operational areas of policing most exposed to military weaponry, equipment and tactics, undertake a full review of their procedures and processes, and training to raise awareness of, identify and if necessary rectify any evidence of the cognitive bias, referred to as the law of instrument.

- That all policies and procedures that relate to the deployment and use of military style weapons are reviewed to ensure that the deployment of such weapons is justified, authorised, and undertaken in a manner in accordance with the values and code of conduct of the Northern Territory Police.

## Influence and Bias

### Testing of Exhibits

In the draft report provided by Superintendent Pollock concerns are raised in relation to the forensic testing of the scissors used by Kumunjayi Walker to stab Rolfe. The scissors were examined by the Forensic Science Branch (FSB) with the end of the scissors testing positive for human blood. Only DNA testing was conducted on this blood – returning a DNA match for Kumunjayi Walker, Rolfe and Eberl. No further tests were conducted on the blood sample to establish the blood type which could have potentially identified the owner of this blood.

The police shirt of Constable Eberl worn during the arrest of Kumunjayi Walker was seized when he returned to Alice Springs from Yuendumu. The shirt was sent to the Australian Federal Police (AFP) for forensic examination as it had a tear on the back that may have been caused during the arrest of Kumunjayi Walker<sup>214</sup>. During his second interview on Wednesday, 13 November 2019, Eberl raised an injury that he suspected may have been caused during the time he wrestled with Kumunjayi Walker.

The injury, a small scratch to his upper chest/inside shoulder region, appeared sufficient to expect that some bleeding would have occurred.

WOOD: *Um, did you receive any injuries?*

EBERL: *Not that I know of, but I would like to have a look at my shirt because I have a scratch here which could have been from the scissors, I don't know.*

WOOD: *Yeah.*

EBERL: *But I never – never mentioned it to anyone other than the other day, but um –*

WOOD: *Okay so where's that shirt now?*

EBERL: *Ah, you guys, well not you guys but someone seized it.*

WOOD: *Oh okay. Yep cool.*

EBERL: *Yep.*

CARTER: *Just on that Tash, and was – has someone photographed the scratch that you have? Is the scratch still there?*

EBERL: *No that's why I wanted to have a look at my shirt, to see if it was, yeah it's still there.*

CARTER: *Oh okay.*

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<sup>214</sup> The examination request was to establish if this tear was consistent with being caused by a sharp edge weapon (scissors).

EBERL: *Yeah.*

WOOD: *We might do that after<sup>215</sup>.*

Forensic examination of the inside of Eberl's shirt may have identified his blood and corroborated the timing of the injury. Unfortunately, this was not considered prior to the shirt being sent interstate for forensic examination and no further forensic examination for blood will take place due to the shirt now being 'contaminated'.

## Comments and Considerations

The observations made by Superintendent Pollock are valid in terms of the investigative process and consideration of lines of inquiry. It is apparent that ABO typing (testing for 'blood group') was not considered by the criminal investigation team in relation to the scissors or the shirt worn by Eberl.

Opportunities for ABO typing to be undertaken on the shirt and the scissors were removed once other forensic testing was undertaken due to contamination.

With the advent of DNA testing, there has been a decline in ABO typing, primarily due to its limited application and ability to discriminate between individuals when compared to DNA testing. This is evidenced by the fact that ABO typing is no longer maintained as a capability by the NTPFES Forensic Science Branch.

As stated by Superintendent Pollock, had the testing been undertaken it may have identified his blood and corroborated the timing of the injury, however, it may also have been the case that identification and corroboration may not have occurred due to the limited capacity of ABO testing to discriminate between individuals. As to what impact, if any, the testing, or failure to test has on the criminal proceedings is unknown and will remain so, until those proceedings are completed.

From the perspective of investigative bias, it does not appear that investigative bias has been demonstrated here. That said, to ensure that the perception of bias does not appear, investigators should be reminded to consider all avenues of inquiry and record the decision rationale for those they choose not to pursue.

**Considerations:** There are no considerations in relation to this issue

## Investigative Bias - Expert Witness

In the draft report provided by Superintendent Pollock, several areas of concern are raised in relation to the selection of expert witness Professor Geoffrey Alpert, the failure of NT Police to engage an Australian or local subject matter expert (SME), concerns raised by the DPP in obtaining an overseas expert, the information or absence of information provided to Professor Alpert, the relationship between Professor Alpert and the investigative team, the short time in which the statement from Professor Alpert was provided, the neutrality of Professor Alpert following on from the above the assessment provided by Professor Alpert. All of which raise concern of potential investigative bias.

The summary of and rationale for these concerns are detailed in the following paragraphs, which are taken directly from the draft report.

<sup>215</sup> Statement (2) of Adam Eberl, P.59 Folder 40 Folio 34

On Wednesday, 13 November 2019, the Director and Deputy Director gave interim advice to Assistant Commissioner Anticich, Commander Dole and Acting Superintendent Pennuto indicating that they believed Rolfe was 'prima facie' criminally liable for his actions and that they would support a charge of murder. Rolfe was arrested soon after<sup>216</sup>.

The evidence, as it stood at the time, was based around the Rolfe's BWV footage. Further corroborative evidence was required from 'use of force' experts in support of the 'prima facie' case against Rolfe.

NTPOL Detective Senior Sergeant Andrew Barram, who advocated that he was a 'Use of Force Expert', provided a statement indicating that he was of the opinion that;

*'The firing of Shots 2 & 3 in rapid succession at WALKER was not justified because it was not reasonable, necessary, proportionate and appropriate in the circumstances having regard to the Force Philosophy'.*

This statement played a pivotal role in the prosecution case against Constable Rolfe. Barram was acutely aware that Rolfe had been charged with murder and that his opinion would form a critical competent in support of the prosecution case.

In reaching a conclusion Barram referenced materials to his statement that were outdated. There was no challenge or peer review by investigators conducted on the statement of Barram. It was accepted as reliable without being subject to any scrutiny by investigators.

On 6 January 2020 Acting Superintendent Pennuto authored an e-mail to the Overall Investigator in Charge of the Operation Charwell. His email followed on from a conversation with advice Pennuto had received from the Deputy Director, D.P.P<sup>217</sup>.

*1. An independent UOF SME review conducted by another Australian counterpart jurisdiction is very important for a number of reasons. Mr Nathan's view is that such a review will only be of meaningful value if conducted by a current practitioner whom has worked in a similar context, risen through the ranks and now reviews UOF whilst being actively involved in UOF policy / training within Australia. Mr Nathan is also of the view that an interstate review is necessary to support any work undertaken by D/S/Sgt Barram (regardless of the position he ultimately adopts at the end of his review). In short, Mr Nathan identified the challenges that the prosecution might face in the event that D/S/Sgt Barram is the only Australian SME and comes under hostile attack in any cross examination. Additionally, whilst there is no offense directed towards D/S/Sgt Barram his experiences in the area of fatal police shootings cannot compare with those of his contemporaries.*

*2. A very recently retired or departed Australian UOF SME. It is Mr Nathan's view that this is a less than perfect situation from a criminal prosecution perspective and can only have credibility if the prosecution can adequately demonstrate that training, tactics and policy have had no material changes since that SME concluded their policing career. I have canvassed both Forbutt and Barram in this regard to no avail. Enquiries may have to be made further afield across Australia.*

<sup>216</sup> It remains unknown if S208E Criminal Code 1983 [NT] was considered as a defence available to Rolfe at this point in time.

<sup>217</sup> IMPORTANT NOTE – This information has been subject to a legal and professional privilege claim in the criminal proceedings.

3. *An international expert. It is Mr Nathan's view that whilst such a person would be very informative in the Coronial setting, in the criminal court this is a large risk to the prosecution for a number of reasons. Amongst other things he cites an absence of context which he believes opens the expert up to cross examination around relevancy and being portrayed as an ivory tower academic (his words). As has been mentioned briefly in JMC briefings, in this regard I have already had introductory discussions with a Professor Geoffrey Alpert from the US. Alpert, who is also an Adjunct Professor in Australia (Griffith University) is an extensively experienced academic researcher whose entire career has been focussed on the police UOF field. Investigators have identified a number of key areas worthy of exploration by this gentleman but are mindful of the position of the DPP. Of note Alpert charges \$375 an hour for his services.*

The response received from Commander Dole was not what Pennuto expected;

*'...at 2.36pm 7 January 2020 I spoke with A/Commander DOLE by telephone and was advised that he, A/A/C PROCTOR and A/D/C ANTICICH had met and discussed the UOF SME issue. I was neither aware to this point that they had met or intended to as I was expecting a JMC discussion. I was informed that during this meeting it had apparently been decided not to formally approach another Australian jurisdiction to provide a UOF SME and that a decision had been made to seek to formally engage international expert Professor Geoffrey ALPERT. I diarised/logged this decision in my official diary. I was informed that it was their view the Australian Police Federation comments had the potential to compromise the independence of any assessment provided by Australian officers (at least perceptually) because of their membership of the association / federation umbrella. I queried with A/Commander DOLE the DPP view and whether the discussion was something I should have been a part of. I was informed that the decision had already been made'*

Despite a number of highly regarded police 'Use of Force' experts from within Australia being nominated to Pennuto no attempt was made to engage them due to public comments made by the Police Federation of Australia that they were supportive of Zachary Rolfe's behaviour. Instead a critical decision was made to engage an overseas expert, contrary to the advice of D.P.P<sup>218</sup>.

The overseas expert employed to provide his 'use of force' opinion, was Professor Geoffrey Alpert, an academic and highly regarded expert who had previously provided evidence at 'Death In Custody' Coronial Inquests in Queensland. Professor Alpert had never provided evidence in a criminal matter in Australia before.

Professor Alpert did not have the opportunity to travel to the Northern Territory to review the matter in person. Instead, he relied on the investigation materials being sent to him by the Operation Charwell investigation team. This included Rolfe's BWV footage and statements from other police officers (witnesses) directly involved in the investigation. It was clear Professor Alpert did not have a clear appreciation on all facts<sup>219</sup>. He was also not provided

<sup>218</sup> This critical decision was not recorded on PROMIS.

<sup>219</sup> Professor Alpert is highly critical of Watch Commander Furniss due to his inability to recall if he read the email from Sgt Frost, sent at 1659 hours 9/11/2019, which containing the Ops Order. By this time Furniss had already handed over the shift responsibility to the evening shift Watch Commander, Alistair Gall, and Furniss fully involved in dealing with the emergency response to the Ernest Giles Road bus crash. Furniss was due to complete duty at 1700 hours (1 minute after Sgt Frost sent the email) and worked on through until 1800 hours due to the bus crash. Alpert obviously did not realise by this time both Gall and the Territory Duty Officer, Hege Ronning-Burns, were aware of the IRT

with all materials of relevance in reaching his opinion that Rolfe's use of force was exactly the same as what Barram had concluded, as not '*reasonable, necessary, proportionate and appropriate to the circumstances*' or '*...the minimum amount of force required for the safe and effective performance of their duties...*'

As an example Alpert did not receive the third statement obtained from Constable Eberl. During this statement (interview) Eberl identified that he had received an injury consistent with having been possibly stabbed by Kumunjayi Walker. Eberl had an obvious small incised wound to the inside of his left shoulder. For some extraordinary reason investigators did not question Eberl in any detail about when/how the injury occurred or even when he first noticed the injury. The police shirt he wore during the arrest of Kumunjayi Walker was not subject to forensic examination for Eberl's blood on the inside of the shirt in the area where the injury was noted. Photographs were obtained of the injury but these were not forwarded to Professor Alpert nor was the third statement. Any suggestion that Kumunjayi Walker had also stabbed Eberl at the time he was fatally shot by Rolfe was of critical importance to the possible defence raised by Rolfe (and later his prosecution team). It also supported Rolfe's statement to Eberl shortly after the third shot had been fired;

*'He was stabbing me, he was stabbing me, it's all good, he's got scissors in his hand, he was stabbing me, he was stabbing you...'*

Professor Alpert provided his statement well before statements from other medical experts became available. In doing so he did not have the opportunity to properly consider all evidence potentially relevant to his own area of expertise.

The email correspondence between investigators and Professor Alpert suggested that the investigation team were editing (correcting) the draft statement of Alpert.

*From: ALPERT, GEOFFREY  
Sent: Friday, 14 February 2020 6:40 AM  
To: Newell, Wayne  
Subject: Re: NT Police - Operation Charwell  
Wayne:*

*I am attaching a draft of my preliminary report. It will give you an idea of the direction I am taking. Please let me know if there is more to review and if there are areas I have missed. Have I addressed all the areas (sic) you wanted me to include. I may address some issues in summary and opinions but am happy to re-organize.*

*Also, let me know if there is inappropriate or (culturally) inflammatory language that I need to change. As we discussed you will be providing me with the list of documents I will include or attach as an Appendix to my report.*

*Once we are comfortable with the organization, style, language and completeness I will draft specific summary and conclusion statements. Also, I am happy to send along any of the documents I cited (mainly in footnotes). And that brings up a style issue. Are you happy with the footnotes or would you rather I incorporate the information into the text of the report.*

*I have spent a lot of time and will be submitting a bill once I have a solid report.  
Geoff*

*From: ALPERT, GEOFFREY*

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deployment and Sgt Frost's Ops Order and had taken control. In any case Furniss had no means of communicating with the IRT members whilst they were in transit to Yuendumu. By the time the IRT members arrived in Yuendumu Furniss had ceased duty and Gall was the Watch Commander. Professor Alpert was factually incorrect and his criticism of Furniss (Statutory Declaration – Professor Geoffrey - Page 4) is unwarranted. Folder 60 Folio 1

*Sent: Saturday, February 29, 2020 11:57 AM*

*To; Newell, Wayne*

*Subject: Latest draft*

*Wayne:*

*Would you please resend me the draft of my report on which you made updates and comments? I was editing my most recent version to be consistent with my summary and opinions but do not think I have the version on which you made comments.*

*Thanks,*

*Geoff*

Alpert is a professor of criminology. His credentials as a 'use of force' expert in the United States of America (USA) are acknowledged. He does, however, have issues with other contemporary experts in the USA and was quick to nominate to investigators the name of Dr William Lewinski as a person who Alpert is quoted as saying 'He certainly seems biased towards police' and 'I wonder when he's seen a shooting he couldn't explain because of his theories'. It seems apparent that Alpert is adverse to other 'use of force' experts who may potentially challenge his opinions and, by default, is subject to contextual bias<sup>220</sup>. The investigation team made no effort to consult Dr William Lewinski in preference to employing Professor Alpert as their '*ivory tower expert*' contrary to the advice provided to them by the D.P.P.

The suggestion that the Police Federation of Australia would unduly influence the opinion of any other 'Use of Force' police expert within Australasia is unfounded. Clearly Detective Senior Sergeant Barram was not averse to provide his impartial 'expert' opinion despite being a member of both the Northern Territory Police Association and the Police Federation of Australia

Assistant Commissioner Anticich highlighted in the minutes recorded for Operation Charwell JMC held on 13 December 2019;

*"NTPFES in leading the prosecution have to prove beyond reasonable (sic) and on the issue around justification, authority and response as it relates to the incident itself. Expert evidence as to that authority and response is imperative".*

*"NTPFES need to provide critical evidence (evaluation on the officers conduct) to avoid any misinterpretation".*

*"NTPFES must lead this critical evidence"<sup>221</sup>.*

Detective Senior Sergeant Barram was selected to provide the '*critical evidence*' and, in reviewing the content of his first statement it was evident he was subject to '*confirmation*

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<sup>220</sup> Professor Alpert gave evidence in support of 5 Death in Custody inquest cases in Queensland in 2017 all involving police shooting an offender found to be brandishing a weapon. Professor Alpert supported the Coroner's findings and defended the police actions in every case despite none of the involved police officers being injured. Reference - Coroners Court of Queensland – Recommendations from Inquest into the Deaths of Anthony William Yung, Shaun Basil Kumeroa, Edward Wayne Logan, Laval Donovan Zimmer and Troy Martin Foster delivered on 20 October 2017.

<sup>221</sup> Joint Management Committee [JMC] Major Crime, Major Investigation and Critical Incident Minutes – Meeting #3 – 13 December 2019, P.2 – 3 Folder 3 Folio 3

*bias*<sup>222</sup>. The pressure brought to bear on him to provide his 'expert' opinion was done so in haste and, similar to Professor Alpert, prior to all available and relevant evidence, including possible exculpatory evidence, being made available to him for consideration<sup>223</sup>.

The pressure placed upon Barram was compounded when he was required to form part of a visiting police delegation to Yuendumu on 5 December 2019. This police delegation, which included the Assistant Commissioner Crime and Integrity (Anticich), Commander Crime (Dole) and the Senior Investigator, Acting Superintendent Pennuto, met with a 'select committee' answering questions from family regarding aspects of the investigation. It was highly inappropriate for Barram to attend a meeting of this type and it potentially compromised his integrity and independence status as an 'expert' by doing so.

Operation Charwell JMC minutes #7 recorded on 6 February 2020;

*It was confirmed that Superintendent Andrew Barram is to stay with the Crime investigative team until his project work is complete'.*

In light of this it is difficult to accept that either Barram or Alpert could claim their 'neutrality' as an expert. Barram was firmly ensconced within the investigation team and Alpert was contracted to provide evidence by the NTPOL executives who formed part of the Operation Charwell investigation and who approved his selection, in contrary to the advice of the D.P.P. Not surprisingly both Barram and Alpert provided identical opinions given access to the same restricted information.

In the case of Rolfe any perceived investigative bias was seemingly not in his favour as opposed to the investigative bias obviously demonstrated by NTPOL investigators in the police shooting 'Death in Custody' of Jabanardi at Ti-Tree on 29 July 1980. On that occasion the Royal Commission into Aboriginal Deaths in Custody Inquiry that followed was highly critical of the investigative bias exhibited by police in favour of the accused to the extent that it was suggested that such obvious bias warranted internal police discipline. Over 40 years later the investigative bias is still evident but now reversed to the detriment of the accused.

## Comments and Considerations.

Several of the issues raised by Superintendent Pollock are potentially still live issues that may be explored in the trial of Rolfe.

In relation to the rationale and decision-making process behind the selection of Professor Alpert, a statement has been provided by Commander Martin Dole which sets out his recollection of the circumstances which lead to the engagement of professor Alpert, which are summarised as follows.

Initially Senior Sergeant Andrew Barram was identified as a local subject matter expert who could undertake reviews of the actions of members from a use of force perspective.

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<sup>222</sup> Instruction - *Major Crime, Major Investigation and Critical Incident Response – Para.31 'Confirmation Bias': When examiners give extra weight to or intentionally seek advice that will endorse their expectations and beliefs while unintentionally ignoring evidence that could negate their belief.* Folder 23 Folio 6

<sup>223</sup> Dr Paull Botterill provided his statement indicating that Constable Eberl's injury was consistent with '*...the movement of a sharp or pointed edge across the skin surface...*'. This statement was not completed until 6 June 2020, well after Barram and Alpert lodged their 'expert' opinion statements. Folder 60 Folio 2

The investigation team made a request to NSW Police for assistance in the form an independent use of force expert and assistance from their forensic imaging section. This request was made to NSW Police at Commissioner to Commissioner level.

Assistance was provided from the Forensic Imaging Section of NSW Police, however there for unknown reasons, there was a delay in response to the request for assistance of a UOF expert

In early January inquiries were made with NSW Police, by Commander O'Brien (Commissioner Chalker's Chief of Staff) with the NSW Police Commissioners Chief of Staff. These inquiries revealed that NSW Police were declining to provide on of their officers to assist as UOF expert, the specific reasons for this decision were unknown.

This information was provided to Commander Dole who then met with A/Deputy Commissioner Anticich and A/Assistant Commissioner Proctor, where discussions were then held in relation to other available options to obtain an expert witness.

Commander O'Brien had advised Dole that he had received information that other Australian Law Enforcement Jurisdictions may also be problematic in the provision of assistance of a UOF expert.

The investigation team were then tasked to identify potential international experts who may be suitable and able to exist. Advice provided from Supt Pennuto was that Queensland Police had used and recommended Professor Geoffrey Alpert.

Due to the urgent requirement to have expert opinion to support the brief of evidence the decision was made to proceed with Alpert.

In relation to the comments reported to have been made by Pennuto and Matt Nathan SC, neither of these persons have been able to be spoken to confirm the comments or any motivation for making them.

It should be noted that these comments were the subject to a claim of legal and professional privilege on the part of the DPP, and that Mr Nathan submitted a confidential affidavit to the court, during disclosure proceedings. The contents of that affidavit are unknown.

In relation to the communications between the investigations team and Alpert and the concerns that investigators influenced / edited Alpert's report. This could possibly be an issue that is considered during the criminal trial. As such no comment is made in relation to it at this point in time.

In relation to the information provided to Alpert by the investigation team, again this is also potentially an issue that could be considered during the criminal trial. As such no comment is made in relation to it at this time.

The issues raised in relation to the evidence of Sgt Barram, is also a live issue that will be subject to scrutiny at the criminal proceedings. As such no comment will be made, other than that an additional statement was provided by Sgt Barram addressing the use of outdated policy in his initial statements.

Other concerns raised in relation to investigative bias and detriment to the accused are again likely to be issues raised in the criminal proceedings. At this stage further inquiries to determine if they are evidence or opinion based will not occur until the criminal proceedings are completed.

### Considerations

As the issues raised are highly likely to be issues raised as part of the criminal proceedings no considerations have been provided at this time.

## External / Political Influence

The death of Kumunjayi Walker received widespread and national reporting in the media. In the days immediately following the incident, the media reported on a number of matters that could be perceived to influence or have the potential to influence:

On Tuesday 12 November 2019 the Northern Territory Chief Minister Michael Gunner, accompanied by the newly sworn in Northern Territory Police Commissioner of Police, Jamie Chalker, travelled to Yuendumu where he addressed residents at a public gathering.

During his address the Chief Minister promised that the Northern territory Coroner would conduct a thorough independent examination into the circumstances surrounding the death of Kumunjayi Walker and assured the gathering that '*consequences will flow as a result of that investigation*'.

Constable Rolfe was arrested the following day and charged with murder. The coronial investigation has not found evidence to indicate that the comments made by the Chief Minister influenced the criminal investigation or the decision to arrest Constable Rolfe.

The decision to arrest Rolfe was made by the Senior Investigator following a meeting with DPP on Wednesday afternoon<sup>224</sup>, the day after the Chief Minister made his '*consequences will flow*' comment at Yuendumu.

**Considerations:** There are no considerations in relation to this issue.

## Ancillary Issues

### Withdrawal of Yuendumu Health Staff

For several weeks prior to the death of Kumunjayi Walker on 9 November 2019, staff from the Yuendumu Health Clinic were victims of house break in's and damage to property<sup>225</sup> believed to have been committed by youth offenders from Yuendumu.

Despite attempts to prevent this offending through meetings with the community and community elders, the break-ins and property damage continued. The ongoing incidents, came to head on the morning of 9 November 2019, after three of the clinic staff had again been subject to persons attempting to break into their homes, and damaging property, which resulted in them being too shaken to sleep.<sup>226</sup>

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<sup>225</sup> Refer Statements from Yuendumu Health Staff : Cassandra Holland and Vanessa Watts in Folder 59 Folio's 5 and 13

<sup>226</sup> Refer Statement Cassandra Holland – Folder 59 Folio 5

Notifications were made to Central Australian Health Service (CAHS) managers advising of the previous nights events and concerns raised by clinic staff in relation to feeling unsafe and their own personal safety<sup>227</sup>.

Further conversations and discussions were held between CAHS managers and the clinic staff, in relation to evacuating staff from the community, and this was formalised after a tele-conference with the clinic staff at 11.40 on 9 November. During this tele-conference all staff were in consensus that they did not feel safe and wished to be relocated to Alice Springs. Staff again confirmed that attempts had been made to break in to 3 houses while staff were home. Cassandra Holland requested to remain the community; however, this request was refused given that she would be the only staff member, and this would be unsafe<sup>228</sup>.

Arrangements were then made for staff to be relocated from Yuendumu and for staff at the Yuelamu clinic to provide health coverage from there. Yuelamu staff had some reservations about the plan and arrangements and were advised they were to only attend 'true emergencies' and efforts were being made to find additional staff to assist<sup>229</sup>.

Attempts were made by Yuendumu clinic staff to meet with community elders and advise them and the community of the decision for clinic staff to evacuate and alternative arrangements in place<sup>230</sup>. Efforts to inform the community of the withdrawal of clinic staff were hampered by the short time frame in which clinic staff were to leave the community, the funeral being held in the community that day, the difficulty in locating and communicating with key community elders. Unfortunately, only a small number of community members and elders were aware of the withdrawal of the clinic staff.

Northern Territory Police were made aware of the withdrawal of clinic staff at both a divisional and local level, through phone calls to Superintendent Jody Nobbs (in Alice Springs) and notification to Sergeant July Frost at Yuendumu.<sup>231</sup>

By 3 pm on the afternoon of 9 November it would appear all of the clinic staff had departed Yuendumu and were on their way to Alice Springs<sup>232</sup>.

The decision to withdraw the clinic staff from Yuendumu was made after consultation with the clinic staff and confirmation of their concerns for safety and willingness to leave the community. The decision at a management level was made by Fiona Cameron, Helen Gill, and David Reeve<sup>233</sup>

David Reeve, in his statement, advises that health clinic staff have been evacuated out of many different communities overtime, but usually due to rioting or violence in the community that leads to the staff being unsafe. He observes that on this occasion things were different, in that the threat was imminent, and that he didn't think staff could be kept in the community at risk of home invasions at night on that Saturday night<sup>234</sup>.

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<sup>227</sup> Refer Statements Helen Gill : Folder 59 Folio 15 and David Reeve: Folder 59 Folio 7

<sup>228</sup> Refer Statement Helen Gill: Folder 59 Folio 15

<sup>229</sup> Refer Statement Helen Gill: Folder 59 Folio 15

<sup>230</sup> Refer Statement Cassandra Holland. Folder 59 Folio 5

<sup>231</sup> Refer Statements – Helen Gill – Folder 59 Folio 15 and Cassandra Holland Folder 59 Folio 5

<sup>232</sup> Refer Statement – Vanessa Watts – Folder 59 Folio 13

<sup>233</sup> Refer Statements – David Reeve – Folder 59 Folio 7, Helen Gill – Folder 59 Folio 15 & Fiona Cameron – Folder 59 Folio 3

<sup>234</sup> Refer Statement David Reeve – Folder 59 Folio 7

David Reeve also highlights in his statement an issue raised by the Yuendumu community that Police had directed the clinic staff to leave because they knew they were going to shoot someone, and they didn't want clinic staff there. Reeve states this was not the case and that the decision to withdraw clinic staff was due to the break-ins, damage to vehicles and the staff feeling unsafe<sup>235</sup>.

In the statement provided by Superintendent Jody Nobbs he confirms being contacted by Helen Gill and being advised of the decision for clinic staff to be withdrawn. Nobbs advised that in his opinion the absence of medical services in Yuendumu was an unacceptable risk and sought advice as to the contingency plans. Gill provided details of the plan to utilise Yuelamu to cover the absence of Yuendumu staff, and also to hold a meeting on the following Monday to discuss how police could assist in re-establishing medical services at Yuendumu<sup>236</sup>.

On reviewing the statements of police, health staff and the health managers there is no information to indicate that police provided advice to or influenced the decision to withdraw the clinic staff from the community.

## Comments & Considerations

The decision to withdraw the clinic staff from Yuendumu is one that was made by the CAHS managers, based on the information provided by the clinic staff themselves and concerns raised in relation to their safety, given the increase in break-ins and property damage, which appeared to be focused on the residences of clinic staff. There are no comments or recommendations in relation to this decision.

The review of all statements highlighted the difficulties experienced by Clinic Staff on the ground in communicating to the community the decision and advice that the staff were being withdrawn from the community. This is an aspect which raised some criticism of the clinic staff from the community itself.

### Considerations

Central Australian Health Service should consider engaging with key stakeholders in communities to develop plans that can be enacted when there is a need for staff to be withdrawn from communities. The plans could be developed in similar fashion to existing emergency management plans or those developed more recently for responses to potential COVID -19 outbreaks in communities.

## The Use of Body Worn Video

The Northern Territory Police have been utilising Body Worn Video cameras as part of their operational duties for several years.

During both the criminal and coronial investigations into the circumstances surrounding the death of Kumanjayi Walker, the use of Body Worn Video (BWV) and its ability to provide a real time perspective and perhaps the most objective account and evidence of what occurred has been realised.

<sup>235</sup> Refer Statement David Reeve – Folder 59 Folio 7

<sup>236</sup> Refer Statement Supt Jody Nobbs – Folder 47 Folio 98

After a review of the use of BWV and the current policies surrounding its use, it has also been identified that there is an absence of clear policy and direction in relation to the use of BWV, especially in relation to the investigation of deaths in custody, or deaths or serious injury resulting from police contact with the public<sup>237</sup>.

During the investigation into the death of Kumunjayi Walker, there are several occasions where BWV has been utilised that highlight the requirement for greater governance in relation to access and use of BWV, these include:

- The viewing of, on multiple occasions by several officers, the BWV footage from Hand and Smith, of the incident involving Kumunjayi Walker on 6<sup>th</sup> November.
- The viewing of the BWV footage of Rolfe by the Alice Springs Investigation team, which included the firing of the fatal shots at Kumunjayi Walker.
- The showing of extracts of BWV footage during interviews with key police witnesses.

The current NTPF policy in relation to the general use of BWV can be found in the online Police Practice and Procedure manual under Body Worn Video. This instruction states:

*"The use of BWV does not replace the need to write statements or complete records of encounters such as notebook entries.*

*Notes of incidents that have been recorded on BWV should clearly state this fact and should also include whether the footage has been reviewed prior to the writing of any notes. Those writing notes should also include whether any other persons were present at such viewings.*

*It should be clear that whilst BWV footage will provide supplemental evidence and, in many cases, can shorten the statement writing process (e.g.: by covering description and words used at incidents), it will still be incumbent on those present to justify their decisions and actions at incidents, regardless as to how obvious they may appear to be on the footage."*

As highlighted in the memo by Detective A/Sgt Hen, this direction does not include any instruction relating to best practice on whether or not BWV should be reviewed when making a statement and / or at what point. It also fails to provide direction around how members should refer to BWV and whether or not it has been reviewed.

The General Order providing guidance in relation to Deaths in Custody, and investigation of serious and / or fatal incident resulting from police contact with the public contains no reference to members reviewing their BWV footage either prior to or during their participation in a recorded interview. Nor does it provide guidance to investigators as to when or how use of BWV should be considered as part of an interview.

There are currently differing perspectives and views on the use of BWV among police officers, police unions, lawyers, the courts, administrators, and policy makers. One of the most controversial aspects is the question of whether police officers should be allowed to view their BWV prior to writing a statement of participating in an interview.

Some of the controversy surrounding this issue is based on whether or not the viewing of the BWV questions the integrity of the officer's statement in terms of whether the recollection is

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<sup>237</sup> NOTE – This issue was also identified by Det A/Sgt Caragh Hen who authored a memorandum on this subject for consideration of the Major Crime management team. Refer Memo – Det A/Sgt Hen – Folder 71 Folio 48

their actual recollection of the actual incident or purely a recollection of the video footage of the incident they have just watched.

An additional controversial issue is whether by not allowing officers to view BWV prior to submitting a statement or participating in an interview, creates a situation where there is a conflict between the officers recollection of events and that footage obtained on BWV, which could cause an officer to lose credibility or be accused of lying if the officers recollection is not as accurate on some of the critical details as the BWV.

In the report authored by Detective A/Sgt Hen, a review of the BWV policies for other Australian Police Forces was undertaken<sup>238</sup>. The general consensus amongst other Australian policing jurisdictions is that officers should be able to view relevant BWV prior to making their statement or be provided the opportunity. Tasmania Police also require that witnesses should only be shown footage once an account has been provided based on their recollection and their memory or recollection has been exhausted.

Advice was sought from Senior Sergeant Glenn Leafe (Officer in Charge of the Criminal Investigation Development Unit (CIDU) in regard to training currently provided on the investigative interviewing courses and what guidance is provided in relation to the use of BWV in interviews.

Training provided in both the investigating interviewing level 1 and level 2 courses recommends that the episodic memory should be exhausted before the introduction of BWV or CCTV footage.<sup>239</sup>

## Analysis, Conclusion & Considerations

In reviewing statements obtained during the investigation (criminal and coronial) into the death of Kumanjayi Walker, it is unclear as to whether officers reviewed their BWV prior to providing their written or recorded statements. It is not declared in any written statements, nor is it a statement made by the officer being interviewed or a question asked by the interviewing officer during any recordings.

In the interviews conducted with officers Eberl, Hawkings, and Donaldson and extract of BWV from their cameras is introduced during their second interview / statement. It is not clear in all of the interviews the purpose for which the BWV is being introduced, whether it is to clarify events or address discrepancies between the witnesses' first account and the evidence contained in the footage.

This issue was identified during the criminal investigation into the death of Kumanjayi Walker, as a result a direction was issued by the SIO (A/Supt Pennuto) that the practice was to cease.

These examples highlight the gaps in NTPF policy and lack of guidance to officers in the use of BWV in all investigations but in particular in those investigations where the subject of the investigation is a police officer or the actions of a police officer. In particular any policy needs to reflect actions required in relation to the storage, access and use of BWV footage obtained during a Death in Custody or an incident where death or serious injury occurs as a result of public contact with police.

<sup>238</sup> Refer Internal Memorandum -D/A/Sgt Caragh Hen – Electronic Evidence BWV – Attachment A : Folder 71 Folio 48

<sup>239</sup> Refer Slide 40 – Investigative Interviewing presentation: Folder 71 Folio 49

## Considerations

NTPFES should

Consider the recommendations made in the report of Detective Acting Sergeant Caragh Hen as part of a broader discussion around the use of BWV, which should include other key stakeholders including staff from NTPF CIDU, the Director of Public Prosecutions and the Coroner to determine and appropriate policy for these situations.

## Cultural Awareness Training

Over his three months of probationary training Constable Zachary Rolfe and his recruit squad received one week of 'cultural awareness' training involving a series of lectures around issues police face when policing remote communities and a basic introduction to aboriginal culture. This week of training culminated in an attendance at Bagot Reserve to meet with Bagot community elders and to interact with aboriginal youth through a game of basketball.

Previous police training has involved visiting a remote community (Daly River) and spending several days appreciating the issues faced by police and understanding the nuances of remote community policing.

Over his 3 years of policing Rolfe had never served in a remote community. Had he done so he may have adopted a different approach when he attended Yuendumu on 9 November 2019. He would have at least an opportunity to understand the ramifications of adopting a militant response as opposed to a negotiated surrender.

The importance of educating recruits has already been highlighted by Deputy Commissioner Michael Murphy in his statement;

*59. One of many important aspects of the Committee is the focus on the cultural aspect, with the need to review training specific to each geographical location, creation of individual and relevant induction packages for officers, and how cultural appreciation is delivered for each region. Engagement will be necessary with key local stakeholders to ensure local knowledge and understanding is imparted to our officers serving the respective communities<sup>240</sup>.*

## Comments and Considerations.

Post the shooting incident at Yuendumu, the NTPF has established a Community Resilience and Engagement Command (CREC) to drive organisational reform across a range of areas including cultural awareness, community engagement and indigenous recruitment.

The CREC has commenced work in partnership with the NTPFES College Command to formulate an effective and relevant cultural awareness and induction package for new recruits that once finalised can be implemented more broadly across the tri-service. The package will include but not be limited to areas of cultural awareness, cultural protocols, working with the Aboriginal Interpreter Service (AIS), local decision making and the importance of true community engagement practice when working and living in remote communities across the Northern Territory. This cultural package is scheduled to be delivered to new recruits from August 2021.

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<sup>240</sup> Statutory Declaration of Deputy Commissioner Michael Murphy, Page 7, Paragraph 59 – dated 21 July 2020 Folder 47 Folio 97

## Considerations

There are no considerations in relation to this issue. It is anticipated that the work undertaken by the CREC, will also be included in any organisational response provided by NTPFES at any coronial inquest.

## Expert Witnesses

The Northern Territory Police used a total of several expert witnesses as part of both the criminal and coronial investigations into the death of Kumanjaya Walker.

Their details and field of expertise of these witnesses are as follows:

### *Dr Geoffrey Alpert*

Dr Alpert is a Criminologist with the University of South Carolina, Columbia, South Carolina, USA.

Dr Alpert was requested by the Northern Territory Police to submit a report regarding the circumstances of a police shooting that occurred at Yuendumu in the Northern Territory on 9 November 2019 relevant to his area of expertise<sup>241</sup>e. The focus of the report and evidence of Dr Alpert being the tactics and use of force, used, and applied during the incident at Yuendumu.

### *Dr Paul Botterill*

Dr Botterill is a pathologist based in Cairns, Queensland.

Dr Botterill was requested by the Northern Territory Police to submit a report regarding the injuries sustained by police officers during the police shooting incident that occurred at Yuendumu on 9 November 2019, relevant to his area of expertise<sup>242</sup>. The focus of the report and evidence of Dr Botterill being the injuries sustained by police officers Zachary Rolfe and Adam Eberle.

### *Dr Andrew McIntosh*

Dr McIntosh is a consultant in Biomechanics and Ergonomics, based in Cremorne, NSW.

Dr McIntosh was requested by the Northern Territory Police to submit a report regarding the injuries sustained by police officers during the police shooting that occurred at Yuendumu on 9 November 2019, relevant to his area of expertise<sup>243</sup>.

The focus of the evidence of Dr McIntosh being how the injuries to police officers Zachary Rolfe and Adam Eberle may have been caused, and the ability of the deceased to cause injury or harm to these officers during their engagement and struggle, taking in to account their positioning.

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<sup>241</sup> Refer Statement and Report of Dr Geoffrey Alpert – Folder 60 Folio 1

<sup>242</sup> Refer Statement and Report of Dr Paul Botterill – Folder 60 Folio 2

<sup>243</sup> Refer Statement and Report of Dr Andrew McIntosh – Folder 60 Folio 3

### *Professor Michael Reade*

Professor Reade is the Defence Professor of Military Medicine and Surgery at the University of Queensland, a serving officer in the Australian Defence Force, and a specialist intensive care physician and anaesthetist currently practising in Australia.

Dr Read was requested by the Northern Territory Police to submit a report within his areas of expertise regarding an assessment of the first aid treatment provided to █████ Walker subsequent to him sustaining several wounds from pistol bullets, the survivability of those wounds with or without medical first aid care; and whether there could have been any action taken by the Police present at the scene or any other person that could have resulted in an outcome other than the death of Mr Walker<sup>244</sup>.

### *Dr Mathew Sorell*

Dr Sorell is the Senior Lecturer in the School of Electrical and Electronic Engineering at the University of Adelaide, specialising in telecommunications and multi-media systems.

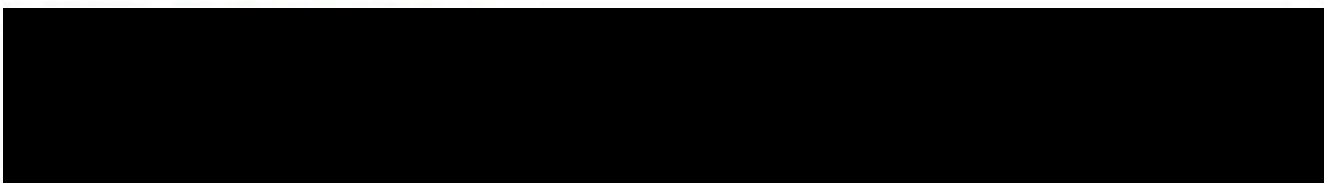
Dr Sorell was requested by the Northern Territory Police to submit a report within his area of expertise regarding his preparation of videos derived from body camera footage in the shooting death of Kumunjayi Walker for the purpose of analysis<sup>245</sup>.

### *Dr Keith Towsey*

Dr Towsey is a registered medical practitioner based in Queensland and is a Burns and Trauma surgeon based at the Royal Brisbane and Women's hospital and St Andrews War Memorial Hospital.

Dr Towsey was requested by the Northern Territory Police to submit a report within his area of expertise, to answer 3 questions specifically relating to the impact and effects upon the deceased person after being shot<sup>246</sup>.

### *Professor Alexander McFarlane AO*



### *New South Wales Police – Forensic Imaging Section*

The New South Wales Police Forensic Imaging Section were requested to provide assistance to the Northern Territory Police, through the development and provision of a compilation of Body Worn Video footage obtained from cameras worn by police officers at the time of the shooting of Kumunjayi Walker<sup>248</sup>.

<sup>244</sup> Refer Statement and Report – Professor John Reade – Folder 60 Folio 4

<sup>245</sup> Refer Statement and Report – Dr Mathew Sorell : Folder 60 Folio's 5-7

<sup>246</sup> Refer Statement and Report – Dr Keith Towsey : Folder 60 Folio 9

<sup>247</sup> Refer Statement and Report – Professor Alexander McFarlane Folder 71 Folio 40

<sup>248</sup> Refer 3D reconstruction – NSW Police Forensic Imaging Section – Folder "Electronic evidence videos etc on accompanying Hard Disk.

## Awareness of Section 208E of the Criminal Code Act

In the draft report provided by Detective Superintendent Scott Pollock, he identified and raised concerns over the lack of awareness of and the level of training provided to Section 208E of the *Northern Territory Criminal Code*, as detailed below:

The last fatal shooting of a member of the public by a Northern Territory Police Officer occurred at Wadeye in October 2002<sup>249</sup>. Since the introduction of the Northern Territory *Criminal Code Act* in 1983 Police Officers have always been instructed that an offence is committed unless 'authorised, justified or excused' under the Defence provisions of the *Criminal Code Act* 1983.

In 2006 Section 208E – 'Law Enforcement Officers' - was introduced into the *Criminal Code Act* 1983 as part of the *Criminal Reform Amendment Act (No2) 2006*. In 2014 Senior Constable Marcus Tilbrook, Remote Policing Command, wrote to his superiors in a memorandum highlighting the introduction of Section 208E - *Criminal Code Act* 1983 – Law Enforcement Officers.

Senior Constable Tilbrook wrote the memorandum in response to what he perceived as outdated teachings provided by Operational Safety Section. He reported as follows.

### **Replacing Part II Criminal Responsibility with Part IIAA**

*Currently the Operational Safety Section still uses the Criminal Code Act, Part II Criminal Responsibility, Division 3 - Justification, in the training of police officers when considering the use of force in relation to firearms training. The three sections within this Division are:*

*s. 27 Circumstances in which force not being such force as is likely to cause death or serious harm is justified,*

*s. 28 Circumstances in which force causing death or serious harm is justified.*

...

*(e) in the case of a police officer, or a person acting by his authority, when attempting to prevent a person committing or continuing the commission of an offence of such a nature as to cause the person using the force reasonable apprehension that death or serious harm to another will result;*

...

*and*

*s. 29 Defensive conduct justified.*

*This is the law, effectively, as it has been taught to NT Police officers since the Criminal Code Act came into effect in the NT on 1 Jan 1984.*

*Since the Criminal Code Act was amended in 2006 to introduce Part IIAA Criminal Responsibility, the defences that relate to what are now Schedule 1 offences (including murder, manslaughter, reckless endangerment, and the like) are now contained in the new Part IIAA.*

*Section 43AA - Application of Part - provides, amongst other things that;*

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<sup>249</sup> Robert Jongmin was shot and killed by police at Wadeye on 23 October 2002.

(3) The following provisions of this Code do not apply in relation to Schedule 1 offences, or declared offences, committed on or after the commencement of this Part:

(a) Part II (Criminal Responsibility);

...

Given that Division 3 - Justification is within Part II (Criminal Responsibility), it would appear - on the face of it - that someone charged with murder, manslaughter or reckless endangerment (a police officer who shot someone in the course of their duty, for example) could not rely on s. 28 (e) above.

It is likely that Section 208E replaces Part II in this instance. It provides that:

### **208E Law Enforcement Officers**

A person is not criminally responsible for an offence against this Part [Part IV Offences against the person and related matters] if:

(a) the person is, at the time of the offence, a public officer acting in the course of his or her duty as a police officer, prison officer or other law enforcement officer; and

(b) the conduct of the person is reasonable in the circumstances for performing that duty.

It is not likely that the current situation will affect any officers' decision in any shoot/don't shoot situation, as both versions of the Code's Criminal Responsibility provisions are based on the common law and it is those principles that are emphasised. **However, there is the potential for the embarrassment for any charged individual and for the NTPF in any coronial investigation when members' training is examined.** The last shooting death by a police officer was of Robert Jongmin at Wadeye in 2002 – before the introduction of Part IIAA

In October 2014 the facilitators guide, 'Introduction to the Criminal Code – Session 2 – Criminal Responsibility' - utilised for the training of recruits was updated with an inclusion of Section 208E Criminal Code Act 1983. There is little evidence to indicated that this update is or was passed on through instruction to students/recruits<sup>250</sup>.

After the shooting death of Kumunjayi Walker it was apparent that there was little to no knowledge of this critical component of legislation amongst Northern Territory Police Officers, including those charged with the responsibility to investigate the death of Kumunjayi Walker.

The statement of the NTPOL 'Use of Force expert', Detective Senior Sergeant Andrew Barram states (incorrectly) in the Rolfe case;

*'Legal justification for police to resort to the use of firearms is provided under the Criminal Code Act 1983 at Section 28 Circumstances in which force causing death or serious harm is justified, and Section 29 Defensive Conduct Justified.*

Detective Senior Sergeant Barram makes no mention of, or reference to, Section 208E – Criminal Code Act 1983 – 'Law Enforcement Officers' – in any of the 5 statements he provided.

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<sup>250</sup> The instructional material relating Section 208E Criminal Code Act 1983 is basically the legislation itself and recruits are not subject to any examination questions pertaining to this legislation.

Additionally, some of the reference materials he has annexed to his statements are archaic and have been replaced<sup>251</sup>. Given his role and responsibility as the (former) Officer In Charge of Operational Safety and Tactics Training (OSTT) this is remarkable. The facilitator guide '*Firearms and Tactics – Recruit 10 Days Skills Block*' does not reference Section 208E – *Criminal Code Act 1983* - when providing basic instruction around '*Legislation applicable to the Use (or Non-Use) of Firearms*'.

Of concern is that since the introduction of Section 208E in 2006, all police, including Constable Zachary Rolfe and his fellow recruits, appear to only have received minimal training regarding this important piece of legislation specifically relating to law enforcement officers<sup>252</sup>. This is in contravention to what is mandated in the Australia, New Zealand Police Advisory Agency (ANZPAA) Use of Force (UOF) principles<sup>253</sup>.

ANZPAA UOF Principle 1 states;

**The authority to use force is derived from the law. Individual police are accountable and responsible for their use of force and must be able to justify their actions at law.**

11. *Police are authorised or justified to use force in a wide variety of circumstances, however, their use of force must have a lawful foundation and must be in the pursuit of a lawful objective.*

12. *The use of force by police raises fundamental human rights issues. Allegations regarding improper use of force undermine the legitimacy of police and, therefore, undermine public confidence and respect for police.*

13. *Police must comprehensively understand the situations and circumstances in which they can use force, and the legal foundation of their use of force. They must also be able to justify these actions at law.*

There is no evidence that suggested Constable Zachary Rolfe (and his fellow recruits) received any comprehensive training around section 208E Criminal Code Act 1983 during their Operational Safety Training. It is not mentioned in the '*Firearms and Tactics – Recruit 10 day skills block*' – '*Facilitator Guide*' – in force when Rolfe undertook his NTPOL recruit training.

The training provided to Rolfe and his fellow instead was limited to police 'use of force' exemptions contained in Sections 27, 28 & 29 of the *Criminal Code Act 1983*.

At the time of Kumanjaya Walker's death there was no judicial precedent offering an interpretation of Section 208E *Criminal Code Act 1983*<sup>254</sup>. However, in her findings handed down on 20 March 2020 in the matter *Andreas Andreou – v – Raymond Neilson-Scott* [2020]

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<sup>251</sup> Statement 1- Review of Tactics and Force – Detective Senior Sergeant Andrew Barram – Annexure C '*National Minimum Guidelines for Incident Management, Conflict Resolution and Use of Force, NPRU report 132.1*' and Annexure D – '*National Guidelines Compendium: Police Use of Lethal Force, Deployment of Police in High Risk Situations, Deployment of Police Negotiators, NPRU Report 123*' Folder 33 Folio 6

<sup>252</sup> Refer Squad 129 timetable and facilitators guide (Criminal Code) – Folder 2 Folio 24

<sup>253</sup> These were the ANZPAA UOF principles in place when Constable Zachary Rolfe undertook basic training with the NTPOL.

<sup>254</sup> Stephen Gray, Barrister and Law Lecturer at Monash University, wrote a Citation Paper '*You Can't Charge Me, I'm A Cop: Should Police, Corrections Staff and Law Enforcement Officer Be Immune From Criminal Liability For Actions Carried Out Against Vulnerable People In The Course Of Their Duties?* S.208E Criminal Code 1983 NT is specifically discussed and the author argues for the abolition of various statutes, including S208E Criminal Code 1983, that provide police with immunity from criminal prosecution for actions carried out in the course of their duties. Folder 69 Folio 7

NTLC 04 Judge E. Armitage provided her opinion as to what type of conduct of a Police Officer may be construed as “*reasonable in the circumstances for performing that duty*”.

Her judgement is vastly different to any interpretation by police officers regarding ‘use of force’ as ‘justified’.

Judge Armitage concluded in her findings that ‘reasonable’ circumstances might include a consideration of:

- (i) the urgency of the situation;
- (ii) whether or not weapons are involved, and the nature and location of those weapons;
- (iii) whether any person(s) is armed;
- (iv) whether there is a risk to life of any person (including the police officer);
- (v) whether or not the police officer is outnumbered;
- (vi) whether or not the police officer has back-up (and how far away it might be);
- (vii) whether or not the police officer has access to relevant information (e.g. police communications, or relevant databases via use of an iPad)
- (viii) the substance of any information, intelligence or history on the person or location;
- (ix) whether any person(s) is intoxicated or affected by illegal drugs;
- (x) whether any person(s) is affected by mental health or physical health issues;
- (xi) the apparent age, strength, or frailty of person(s) with whom the police are dealing;
- (xii) whether children are present;
- (xiii) whether or not the person(s) is co-operating and any known history of compliance or non-compliance;
- (xiv) whether there is a risk of further offending;
- (xv) whether or not the person(s) has a residence;
- (xvi) whether or not there are court orders or bail conditions;
- (xvii) any reported information about the incident;
- (xviii) a general risk assessment; and
- (xix) a police officer’s training and experience.

Judge Armitage highlighted that this is not an exhaustive list.

This judgement was not available to investigators at the time of Kumunjayi Walker’s death. Accordingly, the investigators focussed on obtaining expert evidence centred around the analysis of the BWV of Rolfe rather than taking a broader objective approach looking at

identifying behaviours that constituted an action that may be construed as (s.208E *Criminal Code Act* 1983) 'reasonable in the circumstances'.<sup>255</sup>

## Comments and Considerations

The defences provided by S.208E of the Criminal Code Act, and the determination as to whether the conduct is reasonable in the circumstances for performing that duty, are matters of law the outcome of which may be determined by current criminal proceedings against Rolfe. On this basis no recommendations are made on the specific legislation or its application in this investigation.

It is apparent, on the review undertaken of 'theoretical Use of Force Training', and in particular that delivered to Rolfe during his training, that training delivered was limited in scope and did not reflect contemporary legislation. The NTPFES College is an accredited Registered Training Organisation, with obligations under this status to ensure training materials remain current and contemporary. The NTPFES College should as part of its RTO requirements undertake a review of UOF Training and materials to ensure they reflect current legislation, are contemporary and fit for purpose. No formal recommendation is made or required.

### Considerations

NTPFES should consider

Reviewing their protocols and procedures for the release of legislative reform of specific relevance to their members. Communication and education around the introduction of new/amended legislation remains fundamental to all operational police members.

## Discipline

No disciplinary charges against any IRT member, including Rolfe, has progressed beyond Rolfe being suspended, with pay, under the provisions of S76A Police Administration Act 1978 – 'Suspension of member facing criminal charges'. An application is in place, having been made under S162(7)(7A)(9) of the Police Administration Act 1978 to allow for the 3 year extension of any internal investigation in order for the criminal trial to be resolved. The Commissioner of Police will consider disciplinary charges, if appropriate, after that time.

Currently there has been no further progress on disciplinary charges against Rolfe. Concerns have been raised over the validity of the 3-year extension granted by Judge Morris, as to whether the provisions contained within the Police Administration Act that enable an extension to be sought and approved were correctly followed in line with the Supreme Court decision of Justice Southwood in *Holmes & Anor v Commissioner of Police*.

This issue is currently being considered by NTPFES Law Reform Unit and SFNT. If it is determined that the procedures were not followed, then any matters covered by the extension will be out of statute. Those matters that were identified and are now subject investigation post the granting of the extension are still live matters and are subject to a separate extension.

<sup>255</sup> 'If a person is a Police...Officer...acting 'in the course of' their duties, all that is necessary is that the person's conduct be 'reasonable in the circumstances for performing that duty', an objective test': Stephen Gray – 'You Can't Charge me, I'm a Cop: Should Police, Corrections Staff and Law Enforcement Officers Be Immune From Criminal Liability For Actions Carried Out Against Vulnerable People In The Course Of Their Duties' - UNSW Law Journal Volume 41(3) P.6 Folder 69 Folio 7

## Comments and Considerations

There is currently a working group established comprised of representatives from the Northern Territory Police Association, the NTPFES Law Reform section, and a selection of senior experienced police officers to look at the current disciplinary process contained within the Police Administration Act.

When this work is completed, it is likely to form part of any organisational response provided by the NTPF at inquest.

**Considerations:** There are no considerations in relation to this issue.

## Interviewing of Police Officers

The death of Kumanjayi Walker created a unique and challenging task for the Northern Territory Police in all areas. The complexity and magnitude of the subsequent investigation, combined with a police officer being charged with murder, resulted in the creation of two investigative streams, one focussed on the criminal case and the other dealing with the (multiple) coronial issues arising from his death.

The primacy for obtaining witness information, including that of police, was allocated to the criminal investigators. This resulted in what is best described as a confused and inconsistent approach to the manner in which evidence in the form of written or audio recorded statements were obtained from witnesses.

As part of the coronial investigation, a review of witness statements highlights this confusion, with some statements obtained using the normal procedures for a statutory declaration or electronically recorded declaration and some being obtained with investigators referring to the powers of the Coroner under the *Coroners Act 1993 (NT)* when interviewing witnesses compelling them to provide information.

This situation was further compounded by investigators being unable to obtain evidence from some police witnesses who were reluctant, unwilling or who refused to provide evidence (in the form of a statement).

This specific issue was subject to discussion at an Investigations JMC for Operation Charwell held on 5 February 2020. An action item from that JMC was :

*- Draft a clarifying document that clearly explains the process, states and outlines the interviewing processes according to the PFES General Order.*

A review of the 'Major Crime, Major Investigation and Critical Incident Response' Instruction and the 'Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public' General Order revealed that there is no clear NTPFES policy guideline for dealing with the unique scenario of a murder investigation and a death in custody being conducted at the same time.

An example of the confusion caused by the absence of policy to guide and inform investigators, is evident in the following excerpt from the transcript of the statement investigators obtained from Assistant Commissioner Dr Narelle Beer,

BEER: *So you're saying that it's voluntary as to whether I provide a Statement however you've indicated to me by email that if I don't provide a Statement, I may commit a discipline offence and be subject to discipline*

*action pursuant to 25.4 of the Death in Custody. So you're actually compelling me to make a Statement and therefore it's not voluntary*<sup>256</sup>

And Further;

BEER: *So my concern is the admissibility of the Statement. So if I'm being compelled or obligated under a General Order, given that if I don't, then I'm subject to discipline, to make this Statement, then how is it admissible as a, as a voluntary Statement.*

WELLFAIR: *I think that's a discussion that um, you might have ah not with us as the investigators into the Criminal matter. Um, from –*

BEER: *But you've emailed me saying that I have to make the Statement.*

WELLFAIR: *That's right, I've emailed you under the, to advise you as to how we are operating and under what guidance we operate.*

BEER: *And what will happen if I don't. So, it's contrary to what you're actually saying. That's where my confusions lies*<sup>257</sup>

The questions and points made by Assistant Commissioner Beer are valid and appropriate, in trying to establish what legislative framework the investigators are relying on to obtain her statement. They also demonstrate that investigators are unsure of the legislative framework they are operating in, and their powers, if any to compel an uncooperative witness to comply with their request.

As we know a criminal investigation should adhere to the usual rules of evidence when eliciting information from a witness, which require the information to be provided voluntarily and without coercion, threat, or inducement. This evidence is usually obtained in the form of a written statement, or an audio recorded statement.

The same processes and rules apply to a coronial investigation (except additional questions may be asked or information obtained given the systemic issue lens a coronial investigation may have). The rationale for investigators referring to the *Coroners Act* when taking statements from witnesses is unknown, particularly since there are no provisions within the Act to compel a witness to provide evidence to or answer questions without an order issued by the coroner or at direction of the coroner at an inquest.

An area that has not been explored, which is specific to the obtaining evidence from police witnesses in investigations of this nature, particularly where the witness is refusing to provide evidence, is the application of s.79A of the *Police Administration Act 1978* (the Act) which relates to directed interviews.

These provisions are contained in within the Act under *Division 3 Disciplinary powers generally*, and are replicated below:

**79A Member to answer questions or give information in relation to breach of discipline**

*(1) This section applies to a member who is required by the Commissioner or a prescribed member to answer questions or provide information in relation to an alleged or suspected breach of discipline by a member, whether or not an investigation has been initiated under*

<sup>256</sup> Statutory Declaration (1) of Assistant Commissioner Narelle Beer - P.3 Folder 39 Folio 14

<sup>257</sup> Statutory Declaration (1) of Assistant Commissioner Narelle Beer – P.6 Folder 39 Folio 14

section 81(3).

*(2) The member is not excused from answering a question or providing information when required to do so in relation to the breach of discipline or alleged breach of discipline on the ground that the answer to the question or the information may:*

- (a) incriminate the member; or*
- (b) make the member liable to a penalty*

*(3) However, the answer to the question or the information is not admissible as evidence against the member:*

- (a) in any other proceedings against the member under this Act; or*
- (b) in civil or criminal proceedings in a court.*

*(4) Subsection (3) does not apply in relation to proceedings for the following matters:*

- (a) perjury;*
- (b) employment;*
- (c) a claim in tort against the Territory made by a member. Note for section 79A Failure to comply with this section may constitute a breach of discipline under section 76(d) or (da).*

In considering this section of the Act, there are number of provisions that may prevent the use of this section in a coronial investigation setting. In particular:

- S.79A(1) which requires the member to answer questions or provide information in relation to an alleged or suspected breach of discipline by the member; and
- S.79(3) which indicates the answer to questions or the information provided is not admissible as evidence in: (a) any other proceedings against the member under this Act ; or (b) in civil or criminal proceedings.

## Comments and Considerations

The uniqueness and complexities of the investigation into the death of Kumunjayi Walker, has identified a multitude of systemic issues for the NT Police to consider, several of which are detailed in the above paragraphs.

The death or serious injury of a person as result of contact or the actions of police has a significant impact on the public's confidence in their police force. To maintain that confidence, it is essential that any investigation into the facts of the incident is fully investigated, and that the investigation is of such a standard to withstand scrutiny.

The issues detailed above highlight the complex legislative framework in which investigators have to operate when investigating such matters, the additional complexities when a police officer is charged with a criminal offence and the limitations present when obtaining evidence from police officers.

The issue of police officers refusing or declining to give statements, goes right to the heart of police integrity and transparency and presents a significant risk to the integrity of any investigation and to the reputation of the Northern Territory Police.

As clearly demonstrated, the legislative framework surrounding investigation of this nature is complex, however this complexity is compounded when it involves a police officer, especially where the police officer is a witness who for whatever reason chooses not to be cooperative or provide evidence.

Whether right or not, the public have an expectation and perception that police are accountable and can be held accountable for their actions, and that as police officers and professional witnesses they would be compelled to provide an account of their actions or evidence of their observations, in circumstances where the account or evidence did not incriminate them criminally.

Under the current legislative provisions of the Police Administration Act, an officer cannot be directed to answer questions unless it is in relation to an alleged or suspected breach of discipline committed by them.

There are provisions in the Coroners Act that state a member of the police force who has information relevant to an investigation shall report it to the coroner investigating the death (s.13(2)), however, it is not clear whether this applies to the provision of a statement or what if any consequence there is for not complying with this section.

There also provisions that authorise the Coroner to issue directions to a member of the police force for the purpose of investigating a death of a person held in custody or caused or contributed to by injuries sustained while being held in custody (s.25(1)). Refusal or failure to comply with a lawful direction of the coroner under these provisions carries a penalty of \$5000 fine or 6 months imprisonment.

However, it seems ludicrous that police investigating a matter would have to request the coroner to issue a direction compelling a police officer to provide evidence for a matter that the officer witnessed while on duty.

#### Considerations

That NTPF establish a working group to build on the work already undertaken in relation to the review of Part IV of the PAA, to consider the issues identified in relation to how evidence in both criminal and coronial matters can be best obtained from police and civilian witnesses in the future, and thereafter provide clear and unambiguous policy advice to investigators.

## Cultural Bias

### *Institutional Racism*

In the coronial findings of the inquest into the death of Sasha Green (Green), which occurred in Tennant Creek in 2013, Mr John Lawrence SC submitted that the explanation for the poor performance in the investigations into the death of Green and others was due to institutionalised racism.

The submission based on the contrast in the performance of police in the investigation into the death of Green (an indigenous woman from Tennant Creek) and their performance in the investigation into the death of Carlie Sinclair (a high-profile murder investigation into a caucasian woman from Darwin).

In his findings, the coroner, his honour Judge Cavanagh did not make a finding as to whether the actions of police were due to institutional racism, and stated the following:

*I am loathe to make a finding of institutional racism until there is an opportunity to specifically examine that issue throughout an inquest and with all levels of the police force.*

As part of its investigation into the death of Kumunjaya Walker, the coronial investigation team has been required to examine the concepts of cultural bias and institutional racism specifically

in the context of the initial police response to the incident at Yuendumu on November 6 and the actions of police in the days after that incident and up to the death of Kumunjayi Walker on 9 November 2019.

The examination was undertaken by examining the police response to the incidents at Yuendumu through the lens of cultural bias or institutional racism. For this purpose, the following definition of institutional racism from the Royal Commission into Aboriginal Deaths in Custody, was used:

*“An institution, having significant dealings with Aboriginal people, which has rules, practices, habits which systematically discriminate against or in some way disadvantage Aboriginal people, is clearly engaging in institutional discrimination or racism” (Johnston, 1991a, p. 161)<sup>258</sup>.*

The details of the incident at House 577 Yuendumu on 6 November 2019, the initial police response to that incident, the actions of police in the days preceding that incident and the actions of police and the circumstances leading up to the death of Kumunjayi Walker have been comprehensively examined and detailed in this report, as such they are not replicated here.

The Yuendumu Police attempt to arrest Kumunjayi Walker on 6 November 2019, was an appropriate response. Kumunjayi Walker has breached his suspended sentence and his arrest for that breach was authorised.

Their entry to the premises was lawful and their engagement with Kumunjayi Walker and Rekeisha Robertson undertaken did not indicate any aggression or confrontation.

Unfortunately, this situation changed when Rekeisha Robertson hindered police in their attempts to arrest Kumunjayi Walker by blocking their access to the room. As we know SC Hand took Rekeisha by the arm in an attempt to move her from the doorway, this action was observed by Kumunjayi Walker, who then became angry, armed himself with a small axe, and then commenced threatening and assaulting police by swinging the weapon at officers. The officers did not respond with lethal force options and Kumunjayi Walker ran from the house dropping the axe and running off into nearby bushland.

In considering whether the police actions in attempting to arrest Kumunjayi Walker systematically discriminated against or in some way disadvantaged Aboriginal people (in this context Kumunjayi Walker and more broadly the Yuendumu community), the indications of this review are they did not.

The police actions immediately after the failed attempt to arrest Kumunjayi Walker, and in the days prior to 9 November involved the Officer in Charge of the Yuendumu Police Station engaging with Eddy and Lottie Robertson, family members of Kumunjayi Walker and seeking their assistance to influence Kumunjayi Walker to surrender himself to police.

The rationale for this ‘strategy’ has been explained in detail, previously in this report, however it is worth repeating that the main focus of this strategy was to minimise the risk to police and to Kumunjayi Walker himself, by having the family use their influence to convince Kumunjayi Walker to surrender without the requirement for police to actively pursue, confront and arrest Kumunjayi Walker. Actions that may, given the actions of Kumunjayi Walker demonstrated previously, have resulted in the requirement for police to use force and quite possibly use of force.

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<sup>258</sup> Refer <http://www.austlii.edu.au/au/journals/CICrimJust/2006/1.pdf>

This 'strategy' also included Kumunjayi Walker being at liberty in the community, to enable his attendance at the funeral of a relative being held at Yuendumu. The strategy had a number of risks for the Yuendumu Police; however, those risks were outweighed by the risks posed if an arrest with Kumunjayi Walker resulted in a violent confrontation.

Again, in considering whether the police actions in the days following the incident at house 577 systematically discriminated against or in some way disadvantaged Aboriginal people (in this context Kumunjayi Walker and more broadly the Yuendumu community), the indications of this review are they did not.

The actions of police leading up to and including the shooting death of Kumunjayi Walker have also previously been examined in detail previously in this report.

Noting that there are current criminal proceedings underway against Constable Rolfe, which have precluded a detailed investigation into the actions of police at House 511, the evening Kumunjayi Walker was shot.

The request from Yuendumu Police for additional resources to provide support to local officers, as a result of a property crime series, and their concerns over additional requirement for police resources as a result of the withdrawal of health staff are appropriate.

These actions are not considered to have discriminated against or in some way disadvantaged Aboriginal people.

The decision to deploy the IRT in a general support role and the actions of the IRT on their arrival at Yuendumu, culminating in the shooting death of Kumunjayi Walker have also been examined and comprehensively detailed in this report.

Again, noting that there are current criminal proceedings underway against Constable Rolfe, which have precluded a detailed investigation into the actions of police at House 511, the evening Kumunjayi Walker was shot.

The actions of police in deploying the IRT without a team leader, without a detailed briefing on the taskings they were required to undertake, without a clear description of their mission, without confirmation of the chain of command on their arrival at Yuendumu, demonstrated significant communication and system failings on the part of NTPFES.

The actions of IRT members on their arrival at Yuendumu, undertaking intelligence gathering activities and actively attempting to locate Kumunjayi Walker (contrary to the approved plan), carrying, and openly displaying military style weapons, and attending at and searching houses 577 and 511 again demonstrate communication and systemic failings on the part of NTPFES.

It is emphasised that this observation is predicated on the systemic failures and not the actions of individual officers.

Again, in considering whether the police actions in deploying the IRT without appropriate briefings and a team leader, and the actions of the IRT at Yuendumu in actively attempting to locate Kumunjayi Walker contrary to the approved plan, openly carrying military style weapons and attending at and searching houses in Yuendumu systematically discriminated against or in some way disadvantaged Aboriginal people (in this context Kumunjayi Walker and more broadly the Yuendumu community), the indications of this review are that they did.

## *Bias in favour of Rolfe*

During its investigation the coronial team identified several instances where the actions of police officers, police unions and social media commentary individually and cumulatively indicate a perception of bias in favour of Rolfe.

Some of the instances include (but are not limited to)

- Senior Investigators including in their written statutory declaration statements, concerns regarding the 'rushed' process in relation to the decision to arrest and charge Rolfe;
- A senior police prosecutor refusing to lay the murder charge against Rolfe
- A Northern Territory Police Officer, producing and selling t-shirts with an inflammatory slogan
- The 'pro-Rolfe' media campaign and social media narrative
- The role of Police Unions and the Northern Territory Police Association in briefing all police witnesses including Rolfe.

These matters were considered as points of further inquiry to be undertaken, however, given their relevance and that they are live issues that may arise in the prosecution of Rolfe, in consultation with the Deputy Coroner, a determination was made that these matters would be investigated and dealt with post trial, as would any other issues that may arise from the criminal proceedings.

## Comments and Considerations

The issues of cultural bias and Institutional racism are extremely complex, if not wicked problems. To determine the presence and level of these biases within the NTPFES is well beyond the capacity of the investigation team and the scope of this report.

It is acknowledged the method of examination used above is a rudimentary and does not have the benefit of extensive scientific rigour.

The examination highlights the positive aspects of community policing and the capacity of police to engage the community in resolving issues in a way that is of a benefit to the community.

Unfortunately, the examination also highlights, how the failure to have systems in place or to follow systems can easily result in responses and behaviours that are discriminatory and do disadvantage people, particularly aboriginal people in remote communities.

It should be noted that the Northern Territory Police, as a result of the incident at Yuendumu, has created a Community Engagement and Resilience Command. This Command has commenced a significant culture reform program with a focus on community engagement, support for indigenous employees of the NTPFES, and expansion of the Aboriginal Community Police Officer and Aboriginal Police Liaison Officer program.

### Considerations

NTPFES should utilise the learnings from the investigation in to the death of Kumanjayi Walker, in particular those relating to working in communities, and deploying officers to communities, to inform cultural and operational reform.

That the Northern Territory Police identify a suitably experienced Commissioned Officer to further investigate and the issues relating to 'Bias in favour of Rolfe'

Note – Issues relating to IRT deployment are subject to considerations in a separate part of this report.

## Organisational Response Committee

As part of its response to the shooting incident at Yuendumu, and the subsequent death of Kumunjayi Walker, the Northern Territory Police established an organisational response committee, led by Deputy Commissioners Murphy and Smalpage.

The purpose of the Committee was to identify the main issues arising from the Yuendumu incident and to commence actions and activities to address those themes, to prevent similar issues occurring in the future and to provide comfort to the family of Kumunjayi Walker, the Community, and the Coroner that issues had been identified and changes are occurring.

The themes identified were as follows:

- Recruitment Procedures
- Vetting and Integrity Checking
- Procedures – False Representations
- Use of Force – OSTT Training
- Policy Procedure Practice – Compliance
- Cultural Awareness
- Conscious / Unconscious Bias
- Investigative Response
- Dealing with Intellectually impaired persons
- Command and Control
- Training Records and RTO Status
- Early Intervention Model
- Drug and Alcohol Testing
- Officer Mental Health
- Review of IRT

## Summary of Report

The coronial investigation into the death of Kumunjayi Walker has been a unique and challenging experience for the NTPFES and the coronial investigation team.

The requirement to conduct a high profile, significant and independent 'death in custody' investigation in parallel to a criminal investigation where a police officer has been charged with murder, has not been an easy or simple task.

During the course of the investigation, a number of changes were made in relation to the management and structure of the investigation. Superintendent Pollock APM was originally designated as the Officer in Charge of the Coronial investigation, however, in August 2020, a decision was made to appoint the author (Commander David Proctor APM) as the

Commissioned Officer in Charge and Superintendent Pollock assumed the role of Senior Investigator Officer of the Coronial.

In his role as Senior Investigating Officer, Superintendent Pollock had commenced a draft 'final report' which addressed the key areas of the coronial investigation identified by the Coroner and Deputy Coroner. The report from Pollock was the foundation for this report and a large number of contributions from Superintendent Pollock are contained within the report. I thank him for his support and guidance.

The report addresses the key areas and themes identified by the coroner in his initial meeting with Assistant Commissioner Anticich, and areas and themes further identified in subsequent meetings between the investigation team and the Deputy Coroner.


The coronial investigation by necessity and at times by direction has refrained from investigating matters that would fall under the umbrella of the prosecution and criminal proceedings against Rolfe.

This has meant that inquiries or questions of police officers or other witnesses have not been undertaken or asked, to prevent any interference or compromise of the criminal proceedings.

Where the investigation identified issues that in its view were relevant to the criminal investigation or proceedings and its integrity, these were subject to report and provided to the Assistant Commissioner crime for consideration.

The report highlights a number systemic issues and systems failures for the NTPFES to consider. Although the majority of these do not have a direct nexus to the death of Kumunjayi Walker, the harsh reality is that had these issues or failures been detected and rectified, there is a possibility that the outcome of the events on the evening of 9 November 2019, may have been different.

This report is forwarded for your consideration

  
David Proctor APM  
Commander.

31/8/2021