

IN THE CORONERS COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

No. 51 of 2019

IN THE MATTER OF AN INQUEST
INTO THE DEATH OF:

KUMANJAYI WALKER
on 9 NOVEMBER 2019 at
YUENDUMU

AFFIDAVIT

DEPONENT: Nicholas Andrew Anticich

DATE: 2 September 2022

I, Nicholas Andrew Anticich, formerly of Level 6, NAB Building, 71 Smith Street, Darwin, retired, having been duly *sworn/affirmed *say on oath/affirm the following:

Employment history

1. I am a retired police officer. I served as a police officer in the Northern Territory Police Force ('NTPF'), the Western Australian Police Force ('WAPOL'), the Corruption and Crime Commission, the National Crime Authority and the Australian Federal Police ('AFP') for a combined total of 42 years.



2. Immediately prior to my retirement I served as the Assistant Commissioner Crime and Intelligence Capability of the NTPF. I was seconded to the NTPF in 2019 before becoming a permanent member on 6 March 2020. I was appointed to the role of Assistant Commissioner Crime and Intelligence Capability and held that role until I retired on 14 March 2022.
3. Between 2009 and 2019 I served as a member of WAPOL. During that time I held numerous positions including
 - a. Assistant Commissioner State Intelligence and Command WA Police (2019);
 - b. Assistant Commissioner Professional Standards (2015 – 2019);
 - c. Assistant Commissioner Traffic and Emergency Response (2013 – 2015); and
 - d. Assistant Commissioner Specialist Crime (2009 – 2013).
4. Between 2004 and 2009 I served as the Director of Operations at the Corruption Crime Commission, WA.
5. Between 1990 and 2002, I worked at the National Crime Authority in Sydney and Perth serving as a Director between 1999 and 2002.
6. Between 1980 and 2004 I served as a member of the AFP. During that time I held positions including
 - a. National Manager Counter Terrorism (2004);
 - b. General Manager AFP Western Operations (2002 – 2004);
 - c. Detective Superintendent (1996); and
 - d. Detective Investigator (1984-1996).
7. As part of my professional development, I attained
 - a. A Master's Degree in Public Policy and Administration (Charles Sturt University 2005);
 - b. A Graduate Diploma in Executive Leadership (Australian Institute of Police Management 2001);

c. A Graduate Certificate in Police Management (Charles Sturt University 1996).

8. During my career I also completed numerous leadership, investigation and crime management training courses, including:

- a. Leadership in Counter Terrorism International Program (LinCT -Scotland/Northern Ireland, Washington USA, 2014);
- b. US Federal Bureau of Investigations' Law Enforcement Executive Development Seminar (FBI LEEDS) Training Program (Quantico USA, 2011);
- c. Strategic Coordination Program (International Academy of Law Enforcement and Security, 2011);
- d. Acacia Leadership Program (Assistant Commissioners) (Australian Institute of Police Management, Manly, NSW, 2010);
- e. Company Directors Course (Australian Institute of Company Directors, 2002);
- f. Police Executive Leadership Program (Australian Institute of Police Management, Manly, NSW, 2000);
- g. Management of Serious Crime Course (AFP, 1997);
- h. Police Management Development Program (Australian Institute of Police Management, Manly, NSW, 1996);
- i. Management of Serious White-Collar Crime Course (NSW Police, 1994);
- j. Corporate Crime Course (AFP, 1992);
- k. Proceeds of Crime Investigation Course (AFP, 1994);
- l. Standard Investigators' Course Stage III (Detective Designation) (AFP, 1986);
- m. VIP Protection Course (AFP, 1985);
- n. Police Pursuit Motorcycle Course (WAPOL, 1984);
- o. General Policing Course (AFP, 1982);
- p. Response Team Member Course (AFP, 1981);

- q. Bomb Search Course (AFP, 1981); and
- r. Protective Service Recruit Course (AFP 1980).

Experience of particular relevance

9. As the Director of Operations, Crime and Corruption Commission (2004-2009), I had oversight of all complaints made against police, which were reviewed, assessed and investigated by the Commission. These included complaints regarding allegations of excessive use of force and deaths in police custody.
10. As the Assistant Commissioner, Specialist Crime, WAPOL (2009-2013), I had oversight of all detectives and their investigative practices. I was responsible for the Major Crime Division which included the Coronial Investigations Unit, which investigated over 1,500 reportable deaths annually.
11. In 2010, I was responsible for the coronial response of WAPOL to what is often referred to as the Christmas Island tragedy (Christmas Island is an external territory but within the jurisdiction of the WA Coroner). An Indonesian vessel sank, triggering a coronial investigation into the deaths of 50 asylum seekers and a federal investigation into alleged people-smuggling. In 2012, another vessel capsized off Christmas Island, resulting in 100 further deaths. The matter was jointly investigated by WAPOL and the AFP. I was responsible for the response of WAPOL and instigated a joint investigation following lessons learned from the 2010 matter. I was subsequently awarded the AFP Operations Medal for my role in the 2012 investigation.
12. As the Assistant Commissioner for Professional Standards, WAPOL (2015-2019), I had oversight of all matters related to misconduct, discipline and critical incidents involving police, including deaths in custody and cases where criminal conduct was alleged against police members. I gained significant experience in dealing with the complexities associated with the intersection of criminal investigations and disciplinary processes.
13. As the Assistant Commissioner NTPF, Assistant Commissioner Professional Standards, WAPOL, and Director Operations Crime and Corruption Commission, I reviewed several police coronial investigations into reportable deaths.
14. I am also an experienced investigator. I have personally undertaken criminal investigations in all states in mainland Australia as well as in the United States of America, Hong Kong, Singapore, Indonesia, the United Kingdom and Pakistan. I have overseen serious complex

investigations involving national and transnational criminal networks, international drug trafficking, money laundering, organised crime, terrorism and corruption. I have also investigated a wide range of Commonwealth offences.

15. Further, I have experience in the conduct of high-risk police operations. As both the Assistant Commissioner Traffic and Emergency Response (WAPOL) and the Assistant Commissioner Crime Intelligence and Capability (NTPF), I had oversight and responsibility for the actions of tactical response groups. In those roles I considered and approved high risk actions and deployments.
16. I believe the information contained within this affidavit to be true. It is based on my own knowledge and experience as well as information provided to me, my review of relevant documents, and records held by NTPF.

Kumanjayi Walker

17. I acknowledge and am respectful of the cultural significance of identification of the deceased man in this inquest by name. I will therefore refer to him as 'Kumanjayi Walker' unless otherwise directed.
18. I extend my sincere condolences to the family and friends of Kumanjayi Walker and to the community of Yuendumu. Alongside my former colleagues, I seek to provide all possible assistance to this inquest so that lessons may be learned to minimise the potential that such a death may occur in the future.

Response to statement of Detective Superintendent Scott Pollock

19. I made a previous statement in the form of a statutory declaration on 15 July 2020.¹
20. I make this affidavit to assist the Coroner by addressing various matters raised in the affidavit of Detective Superintendent Scott Pollock dated 3 August 2022.²

¹ See Folio Part 7-4 Statement dated 15 July 2020.

² See Folio Part 7-11A Statement dated 3 August 2022.

21. In making this affidavit I am doing my best to recall conversations, discussions and correspondence from up to 34 months ago. As I am retired and living outside the Northern Territory, I have only had access to limited materials to assist in refreshing my memory.
22. I wish to state at the outset that I emphatically deny and reject any assertion to the effect that I bullied Detective Superintendent Pollock, suggested he acted outside the interests of the NTPF, attempted to stymie the coronial investigation, removed Detective Superintendent Pollock from the coronial investigation in order to protect the criminal investigation, failed to manage the investigations adequately or that I did not respect the role of the Coroner.
23. I also firmly deny and reject any assertion that I was conflicted in any way in my discharge of responsibilities in respect of this matter or that the criminal or coronial investigations were biased. It incorrect to assert that the fairness or efficiency of the coronial investigation by the NTPF was compromised or impaired. On the contrary, I believe both investigations were conducted to a high standard and to the best of the ability of the officers involved. My role was to ensure that the investigations were well resourced and given every available assistance as required.
24. However, multiple challenges arose as a result of the running of concurrent criminal and coronial investigations. In this affidavit I offer my reflections on these matters to assist the NTPF should a similar situation arise in the future.

Investigatory Framework

25. The death of Kumanjaya Walker required an investigative response pursuant to three sets of NTPF General Orders:
 - a. Deaths in Custody, and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public General Order;³
 - b. Coronial Investigations General Order;⁴ and
 - c. Major Crime, Major Incident and Critical Incident Response General Order.⁵
26. I took time to read and consider how the above Orders ought to be interpreted and applied. I recall that applying the guidelines was complicated, as each of the General Orders had some

³ See Folio Part 17-7 – Death in Custody General Order.

⁴ See Folio Part 17-6 – Coronial Investigation General Order.

⁵ See Folio Part 17-8 – Major Crime General Order.

application. I believe the Orders had been drafted and amended as a result of specific instances where shortcomings had been identified or where there had been criticism of the relevant police response. Accordingly, at times it was unclear which order applied. I therefore made a recommendation that the General Orders be reviewed and a single Order be written to apply to each of the situations specified. I understand that this process has commenced and that it is intended that a new General Order Crime (Homicide and Serious) Investigation will come into effect later in 2022.

27. Criminal and coronial investigations conducted by NTPF members in this matter proceeded simultaneously. Three other investigations or inquiries conducted by external agencies (ICAC, Ombudsman's Office, WorkSafe) were also commenced or conducted concurrently with each other and the two investigations.
28. At the time of the shooting, I was off duty and scheduled to return to work on Sunday 10 November 2019. On 10 November, I was advised by telephone that the discharge of firearm had occurred and that it had been declared a critical incident pursuant to the Major Crime General Order.
29. In accordance with the Major Crime General Order, a Joint Management Committee (JMC) was convened. I assumed the role of chair of that committee because I was the Assistant Commissioner Crime and Integrity, and because I had few to no longstanding relationships with NTPF members, having recently joined the NTPF from another jurisdiction. However, I may not have chaired one or more of the initial JMC meetings. The role of the JMC was to provide strategic oversight and strong leadership, including the assigning of responsibility and ownership of a matter, command and control, resources, financial accountability, and oversight governance, while managing identified risks and meeting public expectations.⁶
30. For the reasons explained below, approximately 11 JMC meetings took place in relation to the criminal investigation. Four JMC meetings were separately convened in relation to the coronial investigation between May and December 2020.
31. Sometime later I created an Organisational Response Steering Committee (OSRC) to consider policy and procedure matters identified during the criminal and coronial investigations that would need to be addressed as part of the NTPF institutional response to the death of Kumanjaya Walker. Nine OSRC meetings took place.

⁶ See Folio Part 17-8 – Major Crime – General Order p32.

32. It was not a requirement that JMC meetings be audio-recorded. However, audio recordings were made of JMC meetings by administrative staff to assist in their preparation of the minutes. I understand that some administrative staff deleted the recordings after completing this task while others stored them on a computer system, according to their individual practices. I am informed that recordings of criminal JMCs on 29 November 2019, 6 February 2020, 14 February 2020, 8 May 2020, and 11 November 2020 have been retained. I do not consider it necessary for the recordings to be retained; they are merely an aide for the preparation of minutes by administrative staff. A record of the meeting is contained within the endorsed minutes. It is essential that such minutes be retained.
33. For the sake of clarity, I note that the JMC and OSRC meetings were different in nature to Incident Management Team meetings that took place around the same time. An Incident Management Team was set up in Alice Springs by Assistant Commissioner Narelle Beer to manage the operational (not investigative) response to the shooting. An Incident Management Team was also set up at Yuendumu to respond to community safety concerns.

Initial investigation

34. The criminal investigation into the shooting commenced immediately. Detective Superintendent Jo Foley, of the Regional Crime Division, was appointed the Senior Investigator in Charge on the evening of 9 November 2019. A team of Alice Springs investigators arrived in Yuendumu in the early hours of 10 November 2019.
35. The Coroner and Deputy Coroner were in New Zealand at the time and were notified of the death of Kumanjayi Walker by telephone. On Sunday 10 November 2019 I spoke with the Acting Coroner in relation to the investigation. The Acting Coroner advised me that it was important for the investigation team to be from Darwin and not Alice Springs. Acting Commander Dole and I agreed that Detective Superintendent Kirk Pennuto should be appointed the Senior Investigator in charge of the criminal investigation.
36. The Acting Coroner also spoke about the need for independent criminal and coronial investigations. I recall that I also had conversations to this effect with the Coroner and Deputy Coroner in the days following. There may also have been written correspondence to this effect.



37. In my experience it was unusual to have concurrent coronial and criminal investigations. I could recall only two other matters in my career where coronial and criminal investigations ran at the same time, and they were of a very different nature. They involved a federal crime investigation and the jurisdiction of the state coroner. They both commenced as rescue then recovery operations. The primary witnesses were mainly non-English speaking prohibited non-citizens held in custody who were likely to be deported to their home countries.
38. I expressed concern about the concurrent investigations to the Coroner and the Deputy Coroner. However, the Coroner explained that the conduct of the criminal investigation might well be considered by the coronial investigation. This appeared to be based on previous concerns involving the investigations by police of their own officers in deaths in custody matters. I accepted the Coroner's view and thus the coronial and criminal investigations ran concurrently. Detective Superintendent Pollock was appointed to the role of commissioned officer in charge of the coronial investigation.
39. It was my role to provide support and advice to the investigators but not to dictate their investigatory decisions. I spoke with the Coroner and Detective Superintendents Pollock and Pennuto from time to time, emphasising the need for a 'gold standard' investigation. I was mindful of the importance of documenting decisions that were made. It was my expectation that both investigations would be careful, thorough and of a high standard in accordance with their respective purposes.

Purposes of criminal and coronial investigations

40. The criminal and coronial investigations had different (albeit complementary) purposes. The criminal investigation was concerned with the shooting of Kumanjayi Walker, the events immediately leading up to that point, and whether criminal conduct was identified. The key piece of evidence in that investigation was the body worn footage. The fundamental question in that investigation was whether or not Constable Rolfe had a case to answer for criminal conduct against Kumanjayi Walker as a result of the use of excessive force. The criminal investigation was directed by NTPF investigators.
41. By contrast, the purpose of the coronial investigation was to look at the cause of death and broader issues including the recruitment, training, deployment, supervision of and culture among members of the NTPF and, in particular, IRT members. The coronial investigation was appropriately and in accordance with the usual practice directed by the Coroner.

Contact between coronial investigator and the coroner

42. I understood that Detective Superintendent Pollock met with the Coroner regularly for this purpose. I had no difficulty with his doing so. I had little direct involvement in the coronial investigation, although I was available to speak to the Coroner as the NTPF's executive liaison as and when required.
45. I did make inquiries of Detective Superintendent Pollock from time to time as to the progress of the coronial investigation and the matters he raised with the Coroner. I did this to ensure that I could fulfil my role appropriately and have informed discussions with the Coroner as required. I was not concerned or paranoid that Detective Superintendent Pollock was passing confidential information to the Coroner. I did not threaten or reprimand Detective Superintendent Pollock at any time in relation to this, or anything else. I was not annoyed, angry or disappointed that Detective Superintendent Pollock liaised with the Coroner. His contact with the Coroner was expected and appropriate.
46. I note Detective Superintendent Pollock's recommendation that a record be made of contact between the Coroner and coronial investigators and that this be reflected in the relevant General Orders. I agree and would suggest that formal correspondence be preferred wherever possible.

'Preferencing' the criminal investigation

47. I reject the assertion of Detective Superintendent Pollock that I 'preferenced' the criminal investigation over the coronial investigation and in doing so disrespected the role of the coroner.⁷ Both investigations were very significant and needed to be conducted to a high standard. Further, I have always believed the coronial inquest into this matter was likely to have great importance and significance for NTPF, particularly in relation to the formulation of policies and procedures to minimize the potential for similar deaths.
48. However, it was necessary at an early stage for primacy to be given to the criminal investigation. This was due to the nature of that investigation, the rights of Constable Rolfe as a person suspected or charged with committing criminal offences, the possible consequences of any evidentiary rulings at trial and the possible outcomes of a criminal trial. It was also evident that the criminal charges would need to be determined well before any inquest would be conducted.

⁷ See Folio Part 7-11A Statement dated 3 August 2022.

I was also aware that the evidence gathered during the criminal trial would form a significant part of the coronial investigation.

Relationship between disciplinary, criminal and coronial investigations

49. There was also an ongoing disciplinary investigation in this matter which was conducted by Professional Standards Command.
50. I was the Assistant Commissioner for Professional Standards in WAPOL for a period of five years. As a result, I was very familiar with the dilemma that can arise in situations where a member is required to provide an account for disciplinary purposes yet has the right to silence as a suspect facing potential charges. Members in disciplinary matters must attend directed interviews and are compelled to answer questions posed to them.⁸ The interviews are confidential and cannot be used in other court proceedings.⁹
51. The NTPF Death in Custody General Order required that statements be taken from witnesses as soon as practicable,¹⁰ and that members be interviewed where possible by the completion of their shift.¹¹ However, to do so at a time when a member was regarded as a suspect would be contrary to the right to silence, and potentially affect the admissibility of evidence at any trial.
52. I am conscious that the law has evolved over time. While the General Orders state the material cannot be used in other court proceedings,¹² problems arise in relation to derivative use. I am aware of rulings and precedents that support the proposition that criminal proceedings must have primacy and that the compulsion of suspects can potentially undermine a criminal prosecution.
53. On the evening of the shooting Constable Rolfe was conveyed to hospital in Alice Springs, where he received medical treatment and remained overnight. On 10 November 2019, investigators reviewed relevant body worn video footage and determined that Constable Rolfe was a suspect. Investigators then required adequate time to prepare to conduct a criminal interview with Constable Rolfe. On 12 November 2019, Constable Rolfe declined to be interviewed.

⁸ Annexure NAA-01 – Complaints Against Police General Order, 9.

⁹ Annexure NAA-01 – Complaints Against Police General Order, 9.

¹⁰ See Folio 17-7 Death in Custody General Order, [25.3].

¹¹ See Folio 17-7 Death in Custody General Order, [26.2], [26.3].

¹² Annexure NAA-01 – Complaints Against Police General Order, 10.

54. The decision to delay interviewing Constable Rolfe was not a failure to follow policy or procedure or an investigative failure. Constable Rolfe did not receive favourable treatment from investigators or the executive. At all relevant times he was either a potential suspect or a suspect in a murder investigation. It would have been inappropriate and unjust to interfere with his right to silence. Any account given by him in the absence of a caution ran the risk of being inadmissible at trial. It would also have been poor investigative practice for investigators to seek to conduct an interview in a murder investigation without proper preparation. In any event, I believe it was highly unlikely that Constable Rolfe would have answered any questions based on legal advice.
55. I note the contentions of Mr. Pollock that Part IV of the *Police Administration Act 1978* (NT) has been under review since the early 2000s, that senior managers at the NTPF and the NTPA have failed to reach consensus about how discipline should be dealt with, and that internal discipline matters and identified criminal behaviour should be clearly separated. I agree that the application of Part IV has been the subject of several reviews over many years. I undertook one such review in 2019 when I was on secondment at NTPF from WAPOL. The NTPA has contested the application of various provisions over the years. I agree that discipline matters and alleged criminal behaviours need to be investigated and heard separately. However, the same set of circumstances may well give rise to both criminal and disciplinary proceedings.

Constable Rolfe's travel to Darwin

56. Constable Rolfe travelled from Alice Springs to Darwin on the afternoon of Tuesday 12 November 2019. It is my understanding that Constable Rolfe left Alice Springs following concerns that had been raised about his safety, that he wished to do so, and that he travelled to Darwin because he was not able to fly directly to Canberra from Alice Springs.
57. I reject any assertion or suggestion that the NTPF transferred Constable Rolfe to Darwin to facilitate his arrest, or that NTPF detained Constable Rolfe in Darwin prior to his arrest. I do not consider that Constable Rolfe's travel to Darwin was a critical decision within the meaning of the General Order. I was not involved in decisions that were made about Constable Rolfe's travel to Darwin; those matters fell to be considered by those in a different part of the organisation who were managing his welfare. I understand these matters are addressed in a statement of AC Dr Narelle Beer.¹³

¹³ Folio 7-12 Statement dated 4 June 2020.

Decision to charge Constable Rolfe

58. The decision to charge Constable Rolfe with murder was made after advice was sought from the Director and Deputy Director of Public Prosecutions. On Monday 11 November at 12:09pm I attended upon the DPP with Acting Commander Dole, Acting Detective Superintendent Pennuto and Detective Senior Sergeant Mark Malogorski. On Wednesday 13 November, I attended upon the DPP and Deputy DPP with Acting Commander Dole, Detective Superintendent Pennuto and Detective Senior Sergeant Malogorski.
59. I attended these meetings due to the nature and significance of both the coronial and criminal investigations. Additionally, the Coroner had expressed his view that the conduct of the criminal investigation had to be monitored closely to avoid the possibility that Constable Rolfe received favourable treatment. In my view it was important for a member of the executive to be present when advice was being given in respect of such an important matter.
60. The decision to arrest Constable Rolfe was made after receiving the advice of the DPP and Deputy DPP. The question of when to arrest Constable Rolfe was the responsibility of the arresting officer. Investigators were aware that Constable Rolfe intended to travel to Canberra where members of his family were living. Once a decision was made to arrest Constable Rolfe, it would have been inappropriate to allow him the opportunity to leave the Northern Territory. He was therefore arrested and charged on the afternoon of Wednesday 13 November 2019.
61. I understand that there has been commentary about the timeframe within which a decision was made to charge Constable Rolfe. This is misconceived. In my experience, for charges to be filed within a few days of an alleged homicide is not unusual, particularly when the deceased and defendant have been identified and the question to be answered is principally whether excessive force was used. Further, it is not a requirement that advice is sought from the DPP prior to the decision to charge. Once the investigator believes that the suspect has a case to answer on the basis of available evidence, an arrest should occur.
62. On the basis of my experience interstate, I found it unusual that Constable Rolfe was granted bail on such a serious charge after a hearing took place over the telephone. I have never seen a person charged with murder granted bail from the watchhouse after a telephone application. I do not know why Constable Rolfe was granted bail at such an early stage without an in-court hearing.

However, I am informed that applications for bail are commonly heard over the telephone outside business hours in the Northern Territory. I note that bail was opposed by police in accordance with usual practice before it was granted by Judge Birch. The circumstances of Constable Rolfe's arrest, remand and application for bail were not out of the ordinary and he did not receive favourable treatment from police.

Quality of criminal investigation and allegations of bias

63. I note Mr. Pollock referred to the criminal trial as 'a failed prosecution.' I do not regard the Operation Charwell criminal investigation as a failed prosecution. On the contrary, it was a complex and competent prosecution that, as it turned out, did not result in a conviction. In my view the decision to charge Constable Rolfe with murder was appropriate. It was made after advice was provided by the DPP and Deputy DPP, at a time when Constable Rolfe had not offered a version of events or information as to his state of mind. The fact that Constable Rolfe was found not guilty does not mean he should not have been charged. Constable Rolfe was committed to stand trial, which meant the Local Court considered that he had a case to answer. I am aware of a number of 'no case' submissions, which were not accepted.
64. Constable Rolfe's guilt or otherwise was for the jury to determine. It is not the role of police to convict suspects. That is the role of the court. It is the role of police to conduct a competent investigation and assist in presenting relevant facts to the court. Not all of the facts identified by the investigation team were presented to the jury. This was on the basis of evidentiary rulings and decisions made by the prosecutor and by the trial judge. I consider that some of these facts have the potential to be determined by the Coroner to be relevant to the inquest.
65. In my view the criminal investigation into the death of Kumanjaya Walker was conducted to a very high standard. It was performed thoroughly and carefully by experienced investigators.
66. I note that Mr. Pollock has raised an issue as to the quality of the statements taken. I read some (not all) statements and did not have an issue with them. I understand Mr. Pollock wished that further questions had been asked for that were more relevant to the coronial investigation, but I considered that that was a task for him to perform. I accept that upon reflection, some statements taken during the criminal investigation could have been more detailed. However, as stated above, the key piece of evidence in the criminal matter was the extensive body worn footage. The statements augmented this evidence.

67. I note the comments of Mr. Pollock at paragraph 20 of his affidavit. I agree that separation of witnesses is a standard investigative practice and required by the General Order. However, as stated above, I do not accept that there was an unreasonable failure to interview Constable Rolfe in a timely manner. It is important that at the time of a critical incident, witnesses should be reminded not to discuss what occurred with each other. I understand that not all witnesses received this instruction after the death of Kumanjayi Walker. They should have. However, I also note that the conditions at Yuendumu following the death of Kumanjayi Walker were difficult. Police could not physically be separated due to their limited number. There were also numerous safety concerns; members were required to conduct patrols outside the police station and perform other duties.

Scope of coronial investigation and relationship between criminal and coronial investigations

68. I understood that the Coroner required separate investigations in an attempt to avoid a situation where police conducted or were suspected of having conducted a substandard investigation to assist their colleague who had been charged. Thus, it was a matter of ensuring the integrity of the process and of maintaining community confidence. I also understand that the coronial investigators were required to inform the Coroner in relation to whether police had complied with their own policies and procedures.

69. However, I did become concerned that the focus of the coronial investigation instead shifted to critiquing evidence obtained by criminal investigators at a time when that evidence had not yet been tested in court as this risked undermining the prosecution process. In my view the conduct of the criminal investigation ought to have been considered after the conclusion of the criminal proceedings. I expressed these views to both the Coroner and coronial investigators on several occasions, including as set out below.

Role of Detective Superintendent Pollock in coronial investigation

45. At no time did I direct or effect the removal of Detective Superintendent Pollock from the coronial investigation. I made no attempt to 'protect the deficiencies of the criminal investigation,' and Mr. Pollock was not 'removed from his position of authority' as he has alleged.



46. In May 2020, I made the decision to appoint a Commander as the Commissioned Officer in charge of the coronial investigation, to operate at a level between myself and Detective Superintendent Pollock.¹⁴ The rationale for my decision was to replicate the criminal investigation structure, which had Acting Commander Dole operating at the level between Assistant Commissioner and Superintendent.
47. At this time, Detective Superintendent Pollock was working as the COVID-19 incident controller, with oversight of the coronial investigation. Detective Senior Sergeant Morgan continued to have primary responsibility for the day-to-day conduct of the investigation.
48. Initially the Commander selected was Commander James O'Brien, but a short time later Commander David Proctor was appointed as he had returned to his substantive role.¹⁵
49. At no time did I direct or effect the removal of Detective Superintendent Pollock from the coronial investigation. The appointment of Commander Proctor provided an additional resource to the coronial investigation and the agency response to COVID-19 required many members to move to different positions.
50. Further, as set out in his statement, Detective Superintendent Pollock continued to work on the coronial investigation, preparing multiple draft coronial reports, until January 2021.¹⁶
51. For completeness, I am advised that between 17 January 2020 and 2 March 2020, Detective Superintendent Pollock was on leave. Between 3 March 2020 and 15 April 2020, Detective Superintendent Pollock continued to work as the Commissioned Officer in charge of the Operation Charwell coronial investigation. Both the coronial and criminal investigations were ongoing at a time when the NTPF was required to direct resources to the management of the COVID-19 pandemic. Between 16 April and 10 June 2020, and then between 9 August 2020 and 3 December 2020, Detective Superintendent Pollock worked as the COVID-19 Incident Controller in addition to his work on the coronial investigation. From 4 December 2020 to 9 March 2021, Detective Superintendent Pollock worked full-time as the COVID-19 Incident Controller. Between 10 March 2022 and 19 July 2022, Detective Superintendent Pollock was on leave. He retired from the NTPF on 20 July 2022.

¹⁴ Annexure 'NAA-02' - Email chain dated 7-8 May 2020.

¹⁵ Annexure NAA-03' - Email chain dated 9 June 2020.

¹⁶ See Folio Part 7-11A Statement dated 3 August 2022.

Allegation regarding meeting on 16 April 2020

52. I note Detective Superintendent Pollock's reference to a meeting on 16 April 2020. I do not have a specific recollection of this meeting, but my attention has been drawn to an email chain which suggests it took place.¹⁷ It was not my practice to take personal notes of conversations with investigators in relation to this matter. Relevant issues were recorded in emails, in formal briefing documents and in JMC minutes to enable the information to be managed and retained in a uniform and coherent way. If a member sought to bring a particular concern or issue to my attention, it was my practice to request that that matter be put in writing. The email chain indicates that on 8 May 2020 I asked Detective Superintendent Pollock to document his concerns.

Allegation regarding meeting on 7 May 2020 and access by coronial team to criminal materials

53. I accept that I met with Detective Senior Sergeant Morgan, Acting Commander Dole and Commander O'Brien on 7 May 2020. The matters summarised by Detective Senior Sergeant Morgan in his email of 7 May 2020 were discussed in broad terms.¹⁸ However, I believe the tenor of my comments about looking at the criminal investigation was misunderstood. As set above, I accepted that the coronial investigators would be required to look at the conduct of the criminal investigation, but I was concerned about this being done prior to the relevant evidence being tested in court.

54. During that meeting I accept that I raised the frequency of contact between Detective Superintendent Pollock and the Coroner. I also believe that this matter was misconstrued. Given most of my coronial experience was in WA, I was simply seeking to understand the practices and conventions applicable to NT coronial investigations.

55. I note Detective Superintendent Pollock's contention that following this meeting he did not have access to the information held by the criminal investigation team, that this prevented him completing a 'gold standard' coronial investigation, and that there had been a failure by the executive to acknowledge and comprehend the *General Order – Death in Custody*. I reject this contention. Coronial investigators had full access to the statements and exhibits sourced by the criminal team and were at liberty to take further statements and source

¹⁷ Annexure 'NAA-02' - Email chain dated 7-8 May 2020.

¹⁸ Annexure 'NAA-02' - Email chain dated 7-8 May 2020.

further materials as required. I do not recall Mr. Pollock raising any issues with access to criminal investigation materials at the time. Mr. Pollock did raise a concern that some questions relevant to the coronial investigation had not been asked by criminal investigators. I responded that it was the role of the coronial investigators to ask those questions.

56. I reject the allegation that I failed to acknowledge and comprehend the General Order Death in Custody Order. Mr Pollock was not prevented from conducting a rigorous, professional and independent investigation. He was not directed away or refused access to the criminal investigation. The point made by me was as to timing: the evidence on the criminal brief should not be critiqued until after the trial had concluded.
57. I also note Mr. Pollock's contention that several coronial statements ended up on the criminal brief. I am not sure what is meant by this. My general understanding was that criminal investigators generally did not have access to materials sourced by the coronial team.

Meeting and correspondence with the Coroner late May 2020 and statements of senior police

58. I met with the Coroner and Deputy Coroner, along with Acting Commander Dole, on 26 May 2020. At that meeting the late provision of statements by police witnesses was discussed. I also expressed my concern at the extent to which the coronial investigation intended to examine the criminal investigation at a time when the criminal proceedings had not finalised.
59. On 29 May 2020, I received a letter from the Office of the Coroner confirming what took place at that meeting.¹⁹
60. After receiving that letter, I spoke to Detective Superintendent Pollock. I acknowledge that I did say to him words to the effect of 'This is a fucking disgrace.' In uttering these words, I was not referring to Detective Superintendent Pollock or his investigation. If he interpreted it that way, I regret it. I was referring to the refusal (at that time) of a particular member of the executive, AC Beer, who had refused to make a statement. I do not believe that AC Beer was objecting in principle to providing a statement or was refusing to co-operate with investigators. Rather, AC Dr Beer was seeking clarification as to the nature of the interview (whether it was a directed interview or not) and therefore whether it would be inadmissible. I am aware AC Beer has a law degree. However, I was frustrated and considered it embarrassing that a senior commissioned officer was

¹⁹ Annexure 'NAA-4' – Letter from Coroner dated 29 May 2020.

being seen as not prepared to provide a statement to assist the Coroner in such a serious matter. I was concerned that the issue in relation to AC Beer might reflect poorly on the NTPF and might be misinterpreted by subordinate officers who had provided statements. The Coroner had offered to compel the statement of AC Beer but expressed the preference that it be obtained voluntarily.

61. I did not demand to know what information Mr. Pollock was passing to the Coroner and did not threaten Superintendent Pollock that I would find out. I did not blame Mr. Pollock for the letter. I was embarrassed by the actions of AC Beer or at least at how they might be interpreted.
62. On 29 May 2020, I responded to the Coroner's letter in writing, clarifying that my concern was the jurisdiction of the Coroner over the criminal investigation and that the Coroner's response had addressed my concerns. I made enquiries immediately with respect to the matters raised in the Coroner's letter.²⁰
63. At my request, Mr. Pollock then provided a memorandum in which he set out a list of members from whom statements had not been sought.²¹ It was my understanding that other members who had not yet provided statements had not done so for operational reasons and not because they were uncooperative. Each of the named members listed in that memorandum ultimately provided statements voluntarily including AC Beer. While in that memorandum Mr. Pollock also referred to junior officers not providing statements to the criminal investigation, in my view this a matter for the criminal investigation team to pursue if required.
64. I was concerned that the issue in relation to AC Beer might reflect poorly on the NTPF and might also be misinterpreted by subordinate officers who had provided statements. The Coroner had offered to compel the statement using his powers, but his preference was for it to be obtained voluntarily. I understand that AC Dr Beer ultimately did so. I was not involved in this.
65. I do not accept that the criminal investigators attempted to use the Coroner's powers to compel police to provide criminal statements. My understanding is that AC Beer raised the compulsion issue and I believe the option of the Coroner's powers may have been raised in response by investigators. However, as stated above, to compel a witness to provide a statement would have been likely to render that statement inadmissible in the criminal trial. If this was raised by criminal investigators, then this should not have occurred. However, it is understandable that they may

²⁰ Annexure 'NAA-5' – Letter to Coroner dated 29 May 2020.

²¹ Annexure 'NAA-6' - Memorandum dated 2 June 2020.

have tried to answer any questions asked from AC Beer including whether she could be compelled to answer questions.

Concerns about the evidence of Senior Sergeant Andrew Barram and s208E of the Criminal Code

66. In approximately mid-2020, I set up a Coronial JMC. I do not believe a JMC was a requirement for a coronial investigation, but I created it to replicate and mirror the management structure of the criminal investigation for consistency. I am unable now to state on which date the first Coronial JMC took place, but the second occurred on 21 August 2020.
67. Detective Superintendent Pollock continued to raise concerns in relation to the conduct of the criminal investigation including in relation to the evidence of Detective Senior Sergeant Barram. Detective Superintendent Pollock was concerned that in his statement Detective Sergeant Barram had referred to outdated material. This matter was subsequently considered by criminal investigators. In short, it was identified that Snr Sgt Barram had referred to DIAMO +P as the relevant NTPOL training for use of force. However, the label 'DIAMO + P' had been removed from the *Operational Safety- Session 2 – Incident Management Facilitator Guide*. On 21 August 2020, Detective Sergeant Barram signed a further statement which explained that the concept remained in use and that the principles were still taught to recruits.²²
68. In October 2020, Detective Superintendent Pollock then raised further concerns about the evidence of Detective Senior Sergeant Barram in relation to both the DIAMO + P training and Detective Senior Sergeant Barram's lack of reference to section 208E of the *Criminal Code*. This matter was raised in the Coronial JMC on 21 October 2020.²³
69. Section 208E of the *Criminal Code* provides that:

A person is not criminally responsible for an offence against this Part 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, correctional services officer or other law enforcement officer; and
- (b) the conduct of the person is reasonable in the circumstances for performing that duty.²⁴

²² See Folio 10-8 Statement dated 21 August 2020.

²³ Annexure 'NAA-7'- Coronial JMC minutes dated 21 October 2020.

²⁴ Annexure 'NAA-8'- Memorandum dated 20 October 2020

70. Detective Superintendent Pollock requested that these concerns be referred to the criminal investigation team.²⁵
71. I referred the report of Detective Superintendent Pollock for consideration by Detective Superintendent Kennon at Major Crime.
72. Detective Superintendent Pollock's concerns were then reviewed by Detective Superintendent Peter Kennon of the Crime Division and were also referred to the trial prosecutor and the DPP on 13 November 2020.²⁶
73. On 16 November 2020, Detective Superintendent Kennon recommended that Detective Superintendent Pollock's recommendations be put aside and that greater oversight on the coronial investigation should be instituted to ensure the adequacy of the criminal investigation was not compromised by serial critiques by Mr. Pollock while the prosecution was underway.²⁷
74. On 23 November 2020, in response to Detective Superintendent Kennon's memorandum, I directed that the coronial investigators refrain from looking at matters concerning the adequacy or otherwise of the criminal investigation until the conclusion of the criminal trial.²⁸
75. On 27 November 2020 these matters were discussed at a Coronial JMC meeting. I understood and accepted that the Coroner wished to look at the criminal investigation. However, I was concerned that the criminal trial was being pre-empted and potentially adversely affected; the timing for such an exercise was wrong. I directed at that meeting that any coronial investigation into the criminal proceedings be suspended until such time as I had advised the Coroner.²⁹
76. I then considered the matter further. I formed the view that in spite of my concerns that the criminal trial might be prejudiced or adversely affected, I did not have authority to suspend that aspect of the coronial investigation, On 30 November 2020 I wrote to the Coroner attaching the memoranda of Detective Superintendent Pollock and Detective Superintendent Kennon. I advised the Coroner that:

²⁵ Annexure 'NAA-8'- Memorandum dated 20 October 2020.

²⁶ Annexure 'NAA-9'- Memorandum dated 16 November 2020.

²⁷ Annexure 'NAA-9'- Memorandum dated 16 November 2020.

²⁸ Annexure 'NAA-9'- Memorandum dated 16 November 2020.

²⁹ Annexure 'NAA-10'- Coronial JMC Minutes dated 27 November 2020.



- a. I had withdrawn the suspension of the coronial investigation into matters touching on the criminal proceedings,
- b. The recommendations in the memorandum of Detective Superintendent Pollock had been actioned/were to be considered in the Coroner's report, and
- c. The coronial investigation team were to work to the direction of the Coroner as deemed appropriate.³⁰

Alleged interference in and mismanagement of coronial investigation

77. Notwithstanding the above, I do not accept that there was in any substantive sense any interference in the coronial investigation. The coronial investigation ran for two years while I was at the NTPF, and I understand it continued after my retirement.
78. I was otherwise supportive of Detective Superintendent Pollock's inquiries and approach to the coronial investigation and did not stop him pursuing lines of inquiry. For example, I supported his suggestion to travel to Arkansas to obtain more information about the tactical firearms course Constable Rolfe undertook there³¹. I considered working with our overseas counterparts and sending a member on the course to gain insight into what the training entailed. However, I cannot recall why this did not eventuate.
79. I firmly reject the proposition that I failed to manage both investigations simultaneously. I note Mr. Pollock has not provided specific basis for his allegations. In particular, he has not set out what it was that he was prevented from doing or what would have been different had he been permitted to do so.

Relationship with Detective Superintendent Pollock

80. I emphatically deny bullying or abusing Detective Superintendent Pollock in any way. I concede that discussions at some meetings become heated for the reasons stated above but this did not amount to any form of bullying. I simply exercised the responsibilities that lay with my rank.

³⁰ Coronial JMC Minutes dated 27 November 2020.

³¹ Annexure 'NAA-11'- Letter to Coroner dated 30 November 2020.

81. I firmly deny making any comments to the effect that Detective Superintendent Pollock had acted outside the interests of the NTPF while the commissioned officer in charge of the coronial investigation.
82. I had no dealings with Mr. Pollock prior to his appointment to the role. I did not select him for that role. I did not remove him from that role.
83. I am surprised and disappointed that Mr. Pollock has raised these allegations in a statement tendered to the Coroner and attacked my reputation in such a personal manner. If he had been legitimately concerned, he should have raised his allegations with Professional Standards Command and provided details in an interview while he was a member, not subsequent to his retirement on the eve of the inquest. I would then have been afforded natural justice in a proper setting and would not have been required to respond in this context. I am concerned that these allegations, and my need to firmly defend them, will only serve to divert attention away from what should be the true focus of this inquest: the death of Kumanjayi Walker, and the lessons that can be learned to prevent a comparable tragedy occurring in the future.

Lessons from two investigations

84. I have reflected upon the process of conducting two concurrent investigations. It remains my view that if the coronial and criminal investigations cannot be clearly delineated, in most cases the coronial investigation ought not to commence until after the criminal investigation.

If the two investigations need to occur simultaneously, it is my view that they should do so under the one JMC with clear lines of demarcation. I disagree that two Assistant Commissioners should be appointed to manage the criminal and coronial investigations respectively. As set out above, the investigations are best managed by one Assistant Commissioner under one JMC, which deals with both the criminal and coronial aspects, and can facilitate consistency between the two investigations and avoidance of problematic overlaps which may carry the risk of compromise to the interest of the matter which should take the precedence – the integrity of the criminal trial.

85. There are a number of risks if coronial and criminal investigations are inadequately coordinated.



86. Firstly, there could be problems with requirements of disclosure. In this matter coronial documents were not disclosed in the criminal trial process. Disclosure was facilitated by members of the criminal investigation team who did not have access to the coronial investigation. Criminal investigators may not have considered the coronial investigation when undergoing the disclosure process and/or may have believed that material was obtained on behalf of the Coroner and therefore ought only to be provided to the Coroner. Ultimately, so far as I know, all relevant material was provided in response to a subpoena.
87. Secondly, as shown in respect of AC Beer, having two investigations can create complexities around members not knowing precisely which investigative or legislative powers are being utilised, and whether or not they are required to answer questions. This in turn can create confusion among investigators and witnesses and lead to delays in statements being provided.
88. In this instance, there was also a lack of clarity in the command of the coronial investigation. In other jurisdictions, the convention is that a report to the coroner is compiled by the relevant agency and at its conclusion presented as a document representative of the view of investigators and more broadly, the police force. It was understandable that the Coroner considered various matters to be important and wished for those to be investigated. However, it is a matter of good communication and collaboration. Complexities have the potential to arise if the Coroner so closely directs the preparation of a report that it cannot later be stated accurately that the report was prepared by the police force.
89. I note that paragraphs 98 and 99 of the General Order: Coronial Investigations and Inquests corroborate the division of responsibility and accountability for police officers:

98. Divisional Officers are ultimately accountable for the timely completion and investigation standard of **all** coronial investigation files submitted by members under their control.

99. From the commencement of a coronial investigation, the Divisional Officer is responsible for ensuring the investigating officer has satisfactorily completed a Coronial Interim Report at the completion of every 28-day period until the file is complete.³²

90. I trust this is of assistance to the court.

³² Folio 17-6 – Coronial investigations General Order.

SWORN/AFFIRMED at KALAMUNDA this 3 day of September 2022 in the presence of

~~Registrar/Legal Practitioner/Justice of the Peace/Public Notary/Clerk~~

[Redacted]

DEPONENT:

[Redacted]

[Redacted]

WITNESS

03 SEP 2022

.....

DATE

THIS AFFIDAVIT is filed by, PFES Legal, Police Fire and Emergency Services, Level 6, NAB Building, 71 Smith Street Darwin NT 0800. Ph.: (08) 89810288.


OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

The following are documents referred to as "Annexures" in the affidavit of
Nicholas Andrew Anticich:

NAA-01	Complaints against Police General Order
NAA-02	Email chain dated 7-8 May 2020
NAA-03	Email chain dated 9 June 2020
NAA-04	Letter from Coroner dated 29 May 2020
NAA-05	Letter to Coroner dated 29 May 2020
NAA-06	Memorandum dated 2 June 2020
NAA-07	Coronial JMC Minutes dated 21 October 2020
NAA-08	Memorandum dated 20 October 2020
NAA-09	Memorandum dated 16 November 2020
NAA-10	Coronial JMC Minutes dated 27 November 2020
NAA-11	Letter to Coroner dated 30 November 2020.



SWORN/AFFIRMED at Kalamunda this 3 day of September 2022 in the presence of

~~Registrar/Legal Practitioner/Justice of the Peace/Public Notary/Clerk~~

NICHOLAS ANDREW ANTICICH 

DEPONENT:

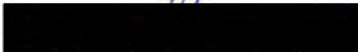
.....
WITNESS /

 
DATE 03 SEP 2022

In-Confidence



This and the following "43" pages is the annexure marked "NAA-01" referred to in the AFFIDAVIT of NICHOLAS ANTICICH declared/sworn/affirmed before me this 3 day of SEPTEMBER, 2022



David Andrew Bazen Reg. No. 29977
A Justice of the Peace for Western Australia

Complaints Against Police

Reference: General Order
Owner: Deputy Commissioner
Classification Category: Professional Standards - 6
Promulgation date: 4 December 2014
Document to be reviewed by: 4 December 2017
Authority: Issued pursuant to:
Section 14A of the *Police Administration Act*

Previous Version: 1 October 2007 (Chapter Four of General Order - Performance Management and Internal Investigations)

In-Confidence

Table of Contents

Policy Statement	4
Purpose	4
Scope	4
Related References	4
Background	5
Implementation	5
Supervision.....	5
Coordination.....	5
Review and Audit	5
Cross Divisional Implications	5
Instruction/Procedures	5
Part One – Legislative Framework	5
Legislation	6
Police Conduct	6
Functions of the Ombudsman.....	6
Functions of Professional Standards Command.....	7
Sources of Complaints Against Police	7
Part Two – Confidentiality	7
Part Three – Recording / Reporting Management	8
Part Four – Members’ Rights and General Matters	9
Members’ Rights	9
Directed interviews	9
Witness Interviews	11
Support Persons	12
Feedback to members	13
Welfare of members.....	13
Sickness during CAP	13
Part Five – Receipt, Recording, Notification and Classification of Complaint	14
Responsibility of Police Officer Taking Complaint	14
Responsibility of Police Officer Taking the Complaint of Person in Custody.....	14
Notification of Complaint to Ombudsman	15
Ombudsman Classification of CAP	15
Part Six – Conciliation Process	17
Categories of Conduct Suitable to be dealt with under Conciliation	17
Functions of Conciliator.....	17
Representation at Conciliation	17
Reports.....	18
Termination	18
Unsuccessful Conciliation	18
Confidentiality.....	18
Part Seven – Complaint Resolution Process (CRP) Procedures	19
Ombudsman’s Oversight.....	19
Categories of CRP Conduct.....	20
CRP	21
Successfully Completed CRP	21
Unsuccessful CRP	23
Member Dissatisfied.....	24
Member’s Rights	24
Inquiries Reveal a Matter is More Serious	24
Withdrawal of Complaint	24
CRP Action Requirements	25
Part Eight – Professional Standards Command Investigation	25
Preliminary Inquiry (PI).....	26
Authorised Conduct of PI	26

In-Confidence

Category 2 PSC Investigation	27
Authorised Conduct of Category 2 Complaint.....	27
Assignment of Complaint to IO	28
Functions of Investigating Officer.....	28
Responsibilities of IO.....	28
Interim Report	29
Final Report.....	29
Review – Complaint Management Division	30
Review – Assistant Commissioner.....	30
Functions of Assistant Commissioner.....	31
Functions of Commander.....	31
Re-classification of Complaint.....	32
Ombudsman Review	32
Requirements when Serious Breach of Discipline Identified	32
Commissioner Notification to the Ombudsman.....	32
Deferral of Investigation	33
Timelines	33
Category 1 PSC Investigation	34
Authorised Conduct of Category 1 Complaint.....	34
Assignment of Complaint to Investigating Officer	35
Functions of IO	35
Responsibilities of IO.....	35
Interim Report	36
Final Report.....	36
Review – Complaint Management Division	37
Responsibilities of Assistant Commissioner	37
Functions of PSC	38
Functions of Deputy Commissioner as Delegate to Commissioner.....	38
Finalisation Process	38
Requirements when Serious Breach of Discipline Identified	39
Commissioner’s Notification to the Ombudsman	39
Deferral of Investigation	39
Timelines	40
Part Nine - Ombudsman Investigation	40
Finalisation Process	41
Part Ten –Complaint Findings.....	41
Part Eleven – Miscellaneous	42
Persons in Custody on Sentence or Remand – Complaints to Ombudsman.....	42
Non-English Speaking Backgrounds	43
Intoxicated Complainants.....	43
False Complaints	44
Appeal and Review	44
Forms.....	44

In-Confidence

Policy Statement

1. It is the policy of the Northern Territory Police Force (NTPF) to embed the highest levels of integrity and ethical standards across all levels of the organisation and ensure all Complaints Against Police (CAP) are subjected to a thorough, professional and objective investigation.

Purpose

2. The purpose of this General Order is to ensure a consistent and structured approach is taken in relation to the investigation of complaints against NTPF members.

Scope

3. This General Order applies to all NTPF members.

Related References

4. The following references apply:
 - *Care and Protection of Children Act*;
 - *Criminal Code Act*;
 - *Information Act*;
 - *Ombudsman Act*;
 - *Police Administration Act*;
 - Police Administration Regulations (NT);
 - Police Arbitral Tribunal Determination 1 of 2011,
 - Police Complaints Agreement¹;
 - General Order – Code of Conduct and Ethics;
 - General Order – Command Management Teams (CMTs);
 - General Order – Custody;
 - General Order – Internal Investigations (under development);
 - General Order – Interpreters and Translators;
 - General Order – Police Practice and Procedure;
 - General Order – Questioning People Who Have Difficulties With The English Language – The ‘Anunga’ Guidelines;
 - NTPF Customer Service Charter;
 - NTPFES Integrity Management Plan;
 - NTPFES Policy, Instructions and Procedures – Internal and Sensitive Investigations Security; and
 - NTPFES Strategic Plan.

¹ Formal agreement between the Ombudsman for the Northern Territory and the Commissioner of Police pursuant to section 150 of the *Ombudsman Act*.

In-Confidence

Background

5. Enhancing the profession of policing, through respect within and for policing, and improving confidence in the NTPF is a priority. All NTPF members are to ensure professionalism and accountability are evident in all aspects of their behaviour. Individual and organisational ethics and integrity, together with the proper exercise of authority and discretion, are essential in maintaining the confidence of the community we serve.
6. The NTPF recognises the need for:
 - 6.1 setting and maintaining high ethical standards in the NTPF;
 - 6.2 maintaining community confidence in the ethics and integrity of the NTPF; and
 - 6.3 placing responsibility for the management of most CAPs and discipline matters within each Command.

Implementation

7. This General Order is implemented by Gazette Notice and supersedes **Chapter Four** of General Order - Performance Management and Internal Investigations promulgated 1 October 2007.

Supervision

8. Supervision of this General Order is the responsibility of all supervisors and managers and complements those responsibilities detailed within General Order – Police Practice and Procedure.

Coordination

9. Coordination of this General Order is achieved by publication in the Police Gazette, news item and via the Police Intranet website.

Review and Audit

10. Review and audit is to be completed within three (3) years of gazettal.
11. Responsibility for the review and audit rests with the Deputy Commissioner in conjunction with Commander, Professional Standards Command (PSC).

Cross Divisional Implications

12. This General Order applies to all NTPF Commands.

Instruction/Procedures

Part One – Legislative Framework

13. This General Order is to be read in conjunction with the Police Complaints Agreement.

In-Confidence

Legislation

14. CAPs are governed by Part 7 of the *Ombudsman Act* and Part II Division 6 of the *Police Administration Act (PAA)*.
15. Nothing in Part II, Division 6 of the *PAA* prevents the Commissioner of Police from exercising any of his Part IV powers during an investigation into a CAP.
16. In accordance with section 14A of the *PAA*, members are to obey any relevant Instructions, General Orders, Code of Conduct and any other instruction or order issued from or by the Commissioner of Police.

Police Conduct

17. CAPs deal with police conduct relating to a decision or action, or a failure to make a decision or take action, during the exercising of a member's power or performance of a function. It extends to the purported exercise of a power or purported performance of a function.
18. Police conduct includes decisions or actions made by an individual in their capacity as a public official under another Act.

Functions of the Ombudsman

19. The prescribed functions of the Ombudsman are to:
 - 19.1 investigate and deal with complaints about police conduct;
 - 19.2 consider and prepare reports on investigations into the conduct of members and to make recommendations about the action to be taken in relation to that conduct;
 - 19.3 monitor investigations; and
 - 19.4 undertake other functions as conferred on the Ombudsman.
20. The regime under the *Ombudsman Act* provides that the level of the Ombudsman's investigatory role is dependent on the category and seriousness of the complaint. The more serious the alleged police conduct, the greater the Ombudsman's oversight into the investigation of the complaint.
21. The Ombudsman has the power to require the Commissioner to:
 - 21.1 give the Ombudsman information about the progress of a Complaint Resolution Process (CRP) or a PSC investigation;
 - 21.2 arrange for the Ombudsman to inspect a document relevant to a CAP; or
 - 21.3 arrange for the Ombudsman to interview a person relevant to a CAP.
22. In addition, the Ombudsman may discuss any aspect of a CAP with the complainant.

In-Confidence

23. Depending on the circumstances of the complaint, section 84 of the *Ombudsman Act* permits the Ombudsman to ask the Commander, PSC to conduct an investigation in a particular manner.

Functions of Professional Standards Command

24. The prescribed functions of the PSC is to:
- 24.1 ensure the highest ethical and professional standards are maintained in the NTPF;
 - 24.2 investigate and otherwise deal with complaints about police conduct under Part 7 of the *Ombudsman Act*;
 - 24.3 perform functions as directed by the Commissioner, including conducting disciplinary matters; and
 - 24.4 undertake other prescribed functions as directed by the Commissioner.

Sources of Complaints Against Police

25. CAPs can be made by one of the following means:
- 25.1 orally or in writing directly to police; and/or
 - 25.2 orally or in writing to the Ombudsman.

Part Two – Confidentiality

26. All records and other materials obtained or created under a CAP are to be treated as strictly confidential and are to be secured appropriately in accordance with the NTPFES Instructions and Procedures - Internal and Sensitive Investigations Security.
27. Section 120 of the *Ombudsman Act* also imposes strict confidentiality and secrecy requirements. Any disclosure of information obtained under a CAP is restricted to:
- 27.1 proceedings for an offence under the *Ombudsman Act*;
 - 27.2 proceedings for another offence; or
 - 27.3 a breach of discipline constituting the action or conduct relating to the CAP.
28. Notwithstanding section 120(1) of the *Ombudsman Act* which only deals with information 'obtained' under a CAP, for the purposes of this General Order confidentiality extends to any document created in the course of investigating a CAP.
29. Correspondence between the Ombudsman and the Commissioner often contains information that is classified as confidential by virtue of the *Ombudsman Act*. These documents are not to be shown to any person not involved in the investigation. All such correspondence is to be attached to the police complaint file.

In-Confidence

30. Correspondence, reports, statements or other similar documents relating to the complaint will not in normal circumstances be shown to a member who is the subject of the complaint, or to any other member who is associated with or has information relevant to the complaint. If in any doubt, members are to seek advice from the Commander, PSC before releasing any information.
31. Pursuant to section 83 of the *Ombudsman Act*, where a member whose conduct is under investigation is provided with a direction to give information, produce a document or thing and/or answer a question relevant to the investigation, the Investigating Officer (IO) is to inform the member that a complaint has been made and describe the nature of the complaint. To enable a member to answer the complaint and for other members to provide information sought by the IO, it may be necessary to divulge some of the contents of the file including the nature of the allegations. This does not mean the subject member is entitled to see or receive a copy of the source document.
32. Subject to the use of information in paragraph 30 above, the *Ombudsman Act* stipulates that a person administering the Act cannot be compelled to give evidence or produce documents relating to the Ombudsman's statutory duties. That protection extends to inquiries or investigations being conducted by or on behalf of PSC.
33. All persons involved in a CAP investigation should be directed not to disclose any information to any other person and if necessary to sign a 'Confidentiality Agreement'. This confidentiality does not extend to disclosure to a member's legal representative or to the agency's Employee Support Services (ESS).
34. Offences for the unauthorised disclosure of information exist under section 155 of the PAA and section 120 of the *Ombudsman Act*. An unauthorised disclosure may also lead to charges under section 76 of the *Criminal Code Act*.
35. It is recognised that for the good management of the NTPF, such information may be released to selection panels on authority of the Commander, PSC who will consider the merits of such request and what level of information will be released.
36. The release of any information is to be determined by the Commander, PSC on advice from Legal Branch.

Part Three – Recording / Reporting Management

37. The primary database for the case management and recording of CAPs is IAPro which is administered and maintained by PSC.
38. For all field investigations, data management will be undertaken through BlueTeam, a web interface database utilised by members to record information in IAPro.
39. Commanders are responsible for ensuring that all information and documentation relevant to an investigation, the outcome and any action taken or expected to be undertaken (including reasons), is recorded in BlueTeam.

In-Confidence

40. It is a requirement that a detailed investigation diary is maintained within BlueTeam during the investigation and a copy of the diary is to accompany the completed investigation file.

Part Four – Members’ Rights and General Matters

Members’ Rights

41. Members under investigation in relation to a CAP do not have the same rights as other members of the public.

Directed interviews

42. High standards of accountability are expected of members who have no **‘right to silence’** in the context of a CAP related to non-criminal matters. In matters which may lead to criminal charges, members do have the right to claim privilege against self-incrimination until further orders are given.
43. Once a member claims privilege:
- 43.1 questioning is to be suspended even if the interviewer believes the questioning relates to non-criminal matters;
 - 43.2 advice is to then be requested from PSC on whether the member can claim privilege regarding the questions;
 - 43.3 if necessary the request will be referred to Legal Branch for further advice; and
 - 43.4 if it is determined that the questioning relates to non-criminal matters then questioning may be resumed.
44. A ‘directed interview’ may be conducted with a subject member as well as a police witness or other member unwilling to provide a statutory declaration or otherwise assist in the investigation of a CAP.
45. It is lawful for a senior member to order a subordinate member to answer questions as to what occurred when the member was performing or should have been performing their duties as a NTPF member.
46. If a member refuses to answer questions in relation to a non-criminal matter, the member may be subject to disciplinary action.
47. Before conducting a directed interview, a member is to be advised that:
- 47.1 information provided in a directed interview will not be voluntarily released to an outside organisation; and
 - 47.2 it may be disclosed to relevant persons:
 - 47.2.1 as part of the departmental/discipline Inquiry;
 - 47.2.2 as part of any criminal investigation;
 - 47.2.3 to the Office of the Director of Public Prosecutions (ODPP) in relation to criminal proceedings against the member or another person;

In-Confidence

- 47.2.4 in any Ombudsman/CAP process;
- 47.2.5 by the Ombudsman; and/or
- 47.2.6 in determining an application by the member for legal assistance in defending related criminal charges or civil proceedings.
48. Notwithstanding paragraph 47.1, directed interviews may be subject to production to a court under a subpoena or upon application under the *Information Act*. As directed interviews are not being conducted in matters that may incriminate the member, in criminal matters there is no basis to claim privilege and the interview can and should be disclosed to the ODPP. This is because the matters disclosed in the interview will not relate to criminal matters.
49. Before commencing a directed interview, the interviewer should inform the subject member that an investigation is being conducted into a CAP in relation to the subject member's conduct and provide a direction as follows:
- “I am directing you to answer questions as part of a disciplinary investigation relating to **detail nature of complaint**. Failure to answer questions which relate to non-criminal matters may constitute a serious breach of discipline contrary to section 76(d) of the PAA. Failure to answer truthfully is a breach of the General Order - Code of Conduct and Ethics. In giving you this direction, you do not have the right to silence in relation to non-criminal matters.
- Information in this interview may be disclosed to a relevant person as part of a department/disciplinary Inquiry or other related processes. If any application is made for disclosure of this interview in civil or criminal matters, the NTPF will object to its disclosure on the grounds of public interest immunity.
- Your answers may be used for this investigation and any CAP investigation.
- Do you understand?

In-Confidence

50. The following preamble is to be used by a PSC member when exercising their powers under section 83(1) of the *Ombudsman Act*.

A complaint has been made about you **detail nature of complaint** and I am investigating this complaint. **[Section 83(2) requires this information to be put to a member if a direction is given under section 83(1)].**

I am directing you to answer questions as part of an investigation into a complaint against police. The *Ombudsman Act* provides me with power to direct you to provide me with any relevant information, documents or things relevant to the investigation into the complaint, and to answer questions relevant to the investigation into the complaint.

Failure to comply with my direction may constitute a breach of discipline contrary to section 76(d) of the PAA.

Failure to answer truthfully is a breach of the General Order - Code of Conduct and Ethics.

In giving you this direction, you do not have the right to silence in relation to non-criminal matters.

It is an offence under the *Ombudsman Act* to provide me with misleading information. It is also an offence to give me a document containing misleading information unless you draw the information which is misleading in the document to my attention.

Your answers may be used for this complaint against police and investigation into a breach of discipline under the PAA.

Do you understand?

51. The direction is **only** valid if it is a direction given by the Commissioner or a member **above** the rank of the subject member.
52. The subject member need not be notified of the nature of the CAP if it would prejudice the conduct of the investigation.

Witness Interviews

53. The direction in paragraph 50 above is not be required to be given to members who are not under suspicion and who are only providing information or statements to assist the investigation.
54. Where it is established that a witness' involvement may be more extensive than originally considered and their conduct may have constituted a breach of discipline, the interview is to be terminated and a directed interview is to be commenced.

In-Confidence

55. When required, members have a responsibility to assist and provide statements as part of their operational duties. A failure to do so may be considered a breach of discipline. The member will be ordered not to disclose that an investigation is being carried out or that they have been required to give information. The member may be given a direction or asked to enter into a written Confidentiality Agreement.
56. Statements made by members not under suspicion may be used for CAP/Ombudsman investigations and are subject to disclosure to the ODPP.
57. Where a member of the public seeks to make a statement for the express purpose of a CAP this should be carefully recorded in their statement. No undertakings can be given about the non-disclosure of a witness statement.
58. The common law privilege against self-incrimination will apply to members of the public and other civilians who provide witness statements.

Support Persons

59. Members subject to a CAP who are to be interviewed by or on behalf of PSC may invite a support person, such as a Northern Territory Police Association (NTPA) representative to be present during the interview.
60. The support person should be advised of their role within the directed interview process. This advice will include the following limitations:
 - 60.1 their role is limited to providing advice and support to the member interviewed; and
 - 60.2 they cannot answer questions on the subject member's behalf.
61. A support person who is deemed to be interfering with the investigation or interview process will be asked to leave the interview.
62. If the support person is acting for more than one (1) subject member, the subject member and the support person are to be instructed not to discuss the matter with any other person including any member yet to be interviewed. Alternatively, they may be asked to enter into a Confidentiality Agreement.
63. The IO is to keep control of the interview. This means the IO has the discretion to exclude a support person, however, if this occurs the IO will be required to justify the reasons for it.
64. IOs have the discretion to prohibit third parties from attending if there is a conflict of interest or the person is considered inappropriate. The onus of justifying this decision rests with the IO. Examples of an inappropriate support person include:
 - 64.1 a witness;
 - 64.2 a person suspected of involvement in the matter; or
 - 64.3 a person who it is suspected might breach confidentiality.

In-Confidence

Feedback to members

65. Command Management Teams (CMTs) or PSC will ensure that formal written advice is provided to members that are the subject of a category 1 or category 2 CAP at the completion of the investigation.
66. The outcome of a CRP will become known to the subject member during the course of the CRP, a copy of the completed CRP form is provided to the member at the completion of the CRP.

Welfare of members

67. Where members are interviewed in relation to a CAP, the member is to be advised of the availability of the ESS.
68. Where the IO has concerns for the member's welfare or other relevant personal issues, the IO should contact the following persons:
 - 68.1 the member's Officer in Charge (OIC);
 - 68.2 the member's Divisional Officer (DO); and
 - 68.3 the ESS who will contact the member and advise them of the services available and determine whether there is a need for their involvement.

Sickness during CAP

69. In cases where a member is sick and unable to either attend an interview or otherwise participate in a CAP investigation, dependent upon the circumstances, the process may be delayed for up to **fourteen (14) days** upon receipt of a medical certificate that indicates the member cannot take part in the process due to their medical condition.
70. No further delays will be considered beyond this and relevant investigations will continue in the member's absence if this becomes necessary. In such circumstances, the member will be afforded the opportunity of appointing a representative to attend any investigation on their behalf or submitting written submissions or evidence.
71. It should be noted that personal (sick) leave will only temporarily delay rather than prevent the investigation of a CAP.
72. It is to be noted that members on personal leave can also have such leave reviewed and pursuant to section 60.5 of the Police Arbitral Tribunal Determination 1 of 2011, may be directed by the Commissioner to undergo a medical examination to determine the members continuing entitlement to the personal leave.
73. The Commissioner, Prescribed Member or an IO may direct the subject member be medically examined under section 83 of the PAA if they are of the opinion that it is relevant to the CAP.

In-Confidence

Part Five – Receipt, Recording, Notification and Classification of Complaint

Responsibility of Police Officer Taking Complaint

74. A member receiving a complaint about the conduct of another member is to:
- 74.1 immediately record the details of the complaint on Blue Team system. Section 65(1) of the *Ombudsman Act* requires that if a CAP is made to a member, that member is to immediately refer it to the Commander, PSC. Blue Team cases are reviewed on a daily basis by PSC members, as such this process will provide compliance with the requirements imposed by the *Ombudsman Act*;
 - 74.2 ascertain from the complainant what further information, witnesses or evidence they may have to support the complaint;
 - 74.3 determine from the complainant the type of outcome they are seeking by making the complaint as this will assist in classifying the complaint;
 - 74.4 if not a supervisor, notify a supervisor of the complaint while the complainant is still present;
 - 74.5 if a supervisor is not available, notify the OIC of the station/section/unit of the complaint while the complainant is present;
 - 74.6 if the supervisor or OIC is unavailable, inform the complainant that he/she will be contacted by the OIC within **twenty four (24)** hours;
 - 74.7 take reasonable steps to preserve any evidence. This includes arranging for any injuries and/or damage to property to be photographed and securing audio or video evidence;
 - 74.8 if the complaint identifies a reportable obligation under the *Care and Protection of Children Act* or some other legislation, the obligation is to be disclosed to the OIC or a Sergeant; and
 - 74.9 maintain confidentiality in accordance with this General Order.

Responsibility of Police Officer Taking the Complaint of Person in Custody

75. A member receiving a complaint about the conduct of another member from a person who is in police custody is to deal with that complaint in accordance with 'Complaints Against Police by Persons in Custody' section of General Order - Custody.

In-Confidence

Notification of Complaint to Ombudsman

76. PSC is to notify the Ombudsman of the receipt of a complaint at the earliest opportunity but within **ten (10) working** days of the complaint being received by PSC. The notification is to include a copy of the statement made by the complainant and any other documents given to police by the complainant.
77. PSC may conduct a Preliminary Inquiry into the grounds of the complaint and make recommendations about the complaint to the Ombudsman. A recommendation may include:
- 77.1 the assigning of a particular classification to the complaint; or
 - 77.2 that the Ombudsman should decline to accept the complaint under section 67 of the *Ombudsman Act*.
78. All documentation examined or obtained during the Preliminary Inquiry will be provided to the Ombudsman to allow for a considered decision regarding the complaint classification recommendation.
79. If the complaint has been successfully dealt with as a CRP, notification of the CAP is to include the completed 'Complaint Resolution Process Form' located in Standard Documents 'PSC' folder. Part Seven of this General Order refers.

Ombudsman Classification of CAP

80. The Ombudsman will consider the recommendations made by the Commander, PSC on the classification of the CAP taking into account the:
- 80.1 nature and seriousness of the alleged member's conduct;
 - 80.2 relevant police practices, procedures or policies; and
 - 80.3 responsible allocation of resources in investigating the complaint.
81. The recommendations of PSC are not binding on the Ombudsman and are meant to assist the Ombudsman in determining the appropriate classification. The final decision on the appropriate classification of a complaint rests with the Ombudsman.
82. The Ombudsman may determine that a CAP falls within one (1) of the following classifications:
- 82.1 **Complaint Declined** – the Ombudsman may decline to deal with or discontinue dealing with a police complaint under section 67 of the *Ombudsman Act*. If a complaint is declined by the Ombudsman then notification will be made to the complainant by formal letter advising them of the outcome;

In-Confidence

- 82.2 **Customer Service Inquiry (CSI)** – An informal method of dealing with issues raised by a member of the public who expresses concern or dissatisfaction with police actions which are nevertheless lawful. A CSI can only be used when the concern or dissatisfaction is about a procedural matter where the conduct of the member is **not** the issue. It allows for the resolution of the issues by providing an explanation to the member of the public at the earliest opportunity. The procedures for dealing with a matter as a CSI are addressed in General Order - Police Practice and Procedure (PPP) under Complaints Against Police;
- 82.3 **Conciliation** - CAPs which the Ombudsman has determined may be suitable for Conciliation (Part 7, Division 3 of the *Ombudsman Act*) as a voluntary participation process between the parties and a qualified Conciliator. Conciliation is not to be confused with a CRP but is akin to that alternate dispute resolution process where the aim is to avoid any escalation of the complaint. The Conciliation process is discussed in Part Six of this General Order;
- 82.4 **Complaint Resolution Process** - CAPs which the Ombudsman has determined may be dealt with as a CRP (Part 7, Division 4, sub-division 1 of the *Ombudsman Act*). A CRP is an informal process between the complainant and NTPF and applies to minor complaints. The CRP requirements are discussed in Part Seven of this General Order;
- 82.5 **Category 2** - CAPs falling within alleged minor police misconduct where the Ombudsman has determined they may be investigated by PSC (Part 7 Division 4 sub-division 2 of the *Ombudsman Act*). The Commissioner or his/her delegate is to report to the complainant on the outcome. Category 2 CAPs are discussed in Part Eight of this General Order;
- 82.6 **Category 1** - CAPs falling within alleged serious police misconduct where the Ombudsman has determined they may be investigated by PSC (Part 7 Division 4 sub-division 2 of the *Ombudsman Act*). The Ombudsman is to report to the complainant on the outcome. Category 1 CAPs are discussed in Part Eight of this General Order; and
- 82.7 **Ombudsman Investigation** - CAPs where the Ombudsman has determined to investigate and release a written report (Part 7, Division 5 of the *Ombudsman Act*). This includes own motion investigations. An Ombudsman CAP is discussed in Part Nine of this General Order.
83. The classification process is intended to provide some flexibility. This means that a complaint classification may be changed as an investigation progresses based on the particular circumstances of the case.

In-Confidence

Part Six – Conciliation Process

84. Under Part 7 Division 3 of the *Ombudsman Act* there is provision for a formal conciliation process to resolve a CAP. A formal conciliation process may be used as an alternative option to reach agreement in a confidential environment without fear of disclosed information being used in the course of a later investigation. The process is **not** to be confused with CRP and is an independent process for dealing with CAPs.
85. Conciliation may be commenced at any time during a CAP investigation. Other processes will be suspended pending the outcome of the conciliation process.
86. Conciliation may be initiated by the Ombudsman or a party to the complaint. Participation in the conciliation process is voluntary and a person may withdraw from the process at any time. The alternate dispute resolution process is overseen by an appropriately qualified conciliator who is appointed with the consent of all parties.
87. It is not the focus of conciliation to absolve members of any alleged misconduct. It is intended to find mutually agreeable outcomes from the grounds of complaint.

Categories of Conduct Suitable to be dealt with under Conciliation

88. Conciliation relates to minor CAPs. Although a different process, it is similar and limited to the kinds of matters capable of being dealt with under the CRP.

Functions of Conciliator

89. A conciliator's functions are as agreed between the parties but generally the conciliator is to settle a complaint by:
- 89.1 explaining the conciliation process and the voluntary nature of the conciliation process;
 - 89.2 explaining the privilege and confidentiality as described under sections 114 and 120 of the *Ombudsman Act*;
 - 89.3 arranging discussions and negotiations between the complainant and the subject member;
 - 89.4 assisting in the conduct of discussions and negotiations;
 - 89.5 assisting the complainant and the subject member to reach an agreement; and
 - 89.6 assisting in resolving the complaint in any other way.

Representation at Conciliation

90. A complainant or a member may make a request to be represented by another person at a conciliation process. The request may be denied if the person's proposed representative is an inappropriate person.

In-Confidence

Reports

91. The Commissioner or the Ombudsman may make a request for an interim report on the progress of a conciliation process. If the conciliation process is being dealt with by PSC or another member, the Commissioner may request an interim report. In all other cases, the Ombudsman may request an interim report.
92. On completion of a successful conciliation, a final report is required. Where the conciliation process was dealt with by PSC or another member, the Commissioner is to provide the Ombudsman with a copy of the final report. In all other cases, the Ombudsman is to provide the Commissioner with a copy of the final report.
93. Where the Ombudsman is satisfied the conciliation process has been properly resolved, the Ombudsman may determine not to further investigate the complaint.

Termination

94. The Commissioner may terminate a conciliation process at any time if the Commissioner considers the process is unlikely to reach agreement between the parties.

Unsuccessful Conciliation

95. If the parties are unable to resolve the complaint, the conciliation process is to be treated as not having taken place and the conciliator is to be released from their appointment.
96. The Ombudsman will consider recommendations made by the Commander, PSC on the re-classification of the complaint and determine the classification. The Ombudsman will notify the complainant of the terms of the new investigation.

Confidentiality

97. It is an offence under the *Ombudsman Act* for a person to disclose any information obtained by them in the course of a conciliation process. Confidentiality does not include the disclosure of information for the purposes of making a report under the *Ombudsman Act*.
98. It is an offence to disclose information obtained during the conciliation process in an Agreement.

In-Confidence

Part Seven – Complaint Resolution Process (CRP) Procedures

99. Under section 8 of the *Police Complaints Agreement*, the Commissioner and the Ombudsman have jointly agreed to a CRP to deal with CAP matters that are minor or trivial in nature. It includes the following process:
- 99.1 the Commissioner and the Ombudsman jointly agree that the early intervention into minor complaints may lead to a quick resolution of the complaint. This may involve listening to the complainant's specific issues and explaining why a particular course of action was taken by members, the legal and practical considerations relating to the incident or offering a simple apology;
 - 99.2 the CRP is not focused on fault-finding or punishment. This procedure is a means of dealing with common complaints about practice, procedures, attitudes and behaviour and is not a 'soft option'. One of the aims of this procedure is to settle and finalise minor complaints without proceeding to formal disciplinary action against members. If some inappropriate conduct is identified, a member is advised/assisted by the CRP Officer to correct the conduct;
 - 99.3 members admitting fault may be counselled as an act of guidance however, any counselling will not be recorded on any document other than the pro-forma provided and will not form any part of any disciplinary procedure under the provisions of the PAA; and
 - 99.4 where there have been three (3) complaints of a similar nature against a member within a 12 month period, further complaints of that nature are to be assessed by PSC before approval for the complaint being dealt with as a CRP is given. This is to ensure there are no development or training issues that require attention at a supervisory level. In appropriate circumstances, such complaints will be dealt with under formal investigatory procedures by PSC.

Ombudsman's Oversight

100. The parties acknowledge that in accordance with section 85 of the *Ombudsman Act*, the Ombudsman maintains a supervisory role for all CRP matters.
101. If the Ombudsman takes an action of the kind described in section 85(1) of the Act, the Ombudsman agrees to consult with the Commander, PSC on the process to be taken to resolve the outstanding CRP to the satisfaction of all parties.

In-Confidence

Categories of CRP Conduct

102. The following categories of complaints can be dealt with as a CRP:
- 102.1 failure to:
 - 102.1.1 take a complaint seriously;
 - 102.1.2 respond promptly during inquiries;
 - 102.1.3 promptly attend the scene of a minor complaint;
 - 102.1.4 return telephone calls;
 - 102.1.5 keep people informed of the progress of inquiries;
 - 102.1.6 charge a person (in minor cases only, e.g. motor vehicle disputed); and/or
 - 102.1.7 return property.
 - 102.2 rudeness/incivility;
 - 102.3 perception of a threat or harassment, subject to severity and nature of threat or harassment;
 - 102.4 unreasonable treatment of a minor matter, e.g. matters where the police action appears appropriate and justified by law and the complaint arises from a misunderstanding of police powers, practices and procedures;
 - 102.5 impartiality, e.g. allegedly taking sides with one of the parties in a dispute;
 - 102.6 a complaint of police driving or parking behaviour which is not aggravated or is able to be reasonably explained;
 - 102.7 a complaint made by a person who has an apparent mental dysfunction or is otherwise disturbed or obsessive and the complaint has either been made previously or appears by its nature to be without substance and consistent with the complainant's apparent state of mind;
 - 102.8 a complaint concerning an incident of minor force associated with an arrest or other lawful police conduct. This may include jostling, pushing and shoving in the execution of duty without any intended features such as intimidation or attempts to obtain a confession but excludes unlawful assaults or unnecessary or unreasonable use of force; and/or
 - 102.9 other such conduct as the Ombudsman and the Commander, PSC determine should be subject to CRP.

In-Confidence

CRP

103. The OIC of a station/section/unit being a member of or above the rank of Sergeant is authorised to informally resolve minor CAPs in accordance with this General Order. This member will be acknowledged as the CRP Officer.
104. On being advised of a complaint, the CRP Officer is to determine whether the conduct complained about comes within one of the authorised categories.
105. If the matter is appropriate to be dealt with as a CRP and is capable of being immediately resolved the CRP Officer is to:
- 105.1 ensure reasonable steps have been or are being taken to preserve evidence. Failure to secure the evidentiary materials may be deemed to be dereliction of duty;
 - 105.2 ensure the complainant is clearly identified on the CRP Form available in Standard Documents 'PSC' folder;
 - 105.3 personally contact the complainant (if not present) within **twenty four (24) hours** if possible;
 - 105.4 explain the CRP as well as the formal investigation process to the complainant;
 - 105.5 ask the complainant's view on the outcome he/she expects;
 - 105.6 obtain the complainant's agreement to the matter being informally resolved. The CRP is a voluntary process and if the complainant does not agree, the process should not be commenced;
 - 105.7 contact the member(s) involved, advise the details and explain the CRP. Ensure the member(s) are aware of the no-blame procedure and invite an explanation; and
 - 105.8 attempt to settle the issues arising out of the complaint. To do so it may be appropriate for the CRP Officer to arrange a meeting between the complainant and the member(s) concerned.
106. A CRP Officer has a large degree of flexibility available to them in order to manage the CRP complaint. For example, it is not necessary for sworn statements or records of interview to be taken in support of the investigation unless the CRP Officer establishes the complaint is unlikely to be resolved.

Successfully Completed CRP

107. If the complainant is satisfied with the process, the CRP Officer is to record the details of the complaint and mark that the complaint was successfully resolved on the CRP Form.

In-Confidence

108. The CRP may be resolved through the following means, the details of which are to be included in the CRP Form:
- 108.1 remedial advice given to member(s) – complainant satisfied;
 - 108.2 apology given to complainant – complainant satisfied. Generally, an apology may be offered personally by the member or on behalf of the member through the CRP Officer. A personal apology can only be offered where the member gives consent;
 - 108.3 action taken by the NTPF is explained to the satisfaction of the complainant;
 - 108.4 acknowledgement by complainant where on inquiry, the complainant accepts error or misunderstanding made by himself/herself;
 - 108.5 complainant satisfied for the matter to be brought to the attention of the member(s) concerned;
 - 108.6 complainant and member(s) fail to agree on subject of complaint but complainant satisfied that everything possible has been done to resolve the matter; and/or
 - 108.7 complainant was offered and accepted reimbursement for minor expenses, i.e. dry cleaning of clothes, etc.
109. Proof of the outcome agreed upon by the complainant is to be provided. For example, by signature, email or some other form of proof.
110. On completion of the CRP, the CRP Officer is to identify any outstanding issues of concern which arise from the inquiries made. Those issues are to be identified on the CRP Form. Where issues are within the responsibility of the CRP Officer, he/she is to take the necessary steps to address those issues.
111. Where the issues relate to the responsibilities of another member, the CRP Officer is to ensure those issues along with the recommendations are sent to that member for follow up. This matter is also to be addressed on the CRP Form submitted to PSC at the completion of the process.
112. The CRP Officer is to ensure all outcomes of the CRP are recorded on BlueTeam.
113. The completed CRP Form (together with the complainant's statement if a statement was made) is to be submitted to the Commander, PSC within **twenty four (24) hours** of the complaint being finalised.
114. Commander, PSC is to forward the CRP Form to the Ombudsman at the earliest opportunity but within **seven (7) days** of the CRP being finalised.
115. On receipt of the CRP Report, the Ombudsman will consider the complaint and determine whether:
- 115.1 the action taken was reasonable;
 - 115.2 there are any outstanding issues;

In-Confidence

- 115.3 the complaint was resolved; and
 - 115.4 that no further action is required.
116. The Ombudsman will finalise the complaint as a CRP if the matter requires no further action.
117. The Ombudsman may determine that the CRP is not suitable for finalisation and may re-classify the complaint where:
- 117.1 the complainant is dissatisfied with the CRP, the outcome of the CRP, or does not agree to continue with the CRP;
 - 117.2 evidence indicates the complaint is not suitable as a CRP;
 - 117.3 where a CRP is otherwise unsuccessful or likely to be unsuccessful;
 - 117.4 inquiries reveal the complaint is more serious than first considered; or
 - 117.5 on the Ombudsman's own motion.
118. If the Ombudsman is of the view the complaint should be dealt with in another way, the Ombudsman will notify the complainant of that decision.

Unsuccessful CRP

119. If the complainant is dissatisfied with the outcome of the CRP, they may ask the Ombudsman to have the complaint investigated by PSC under Part 7, Division 4, sub-division 2, or by the Ombudsman under Part 7, Division 5, sub-division 2 of the *Ombudsman Act*.
120. In the event the complainant is dissatisfied with the CRP, the complainant is to be advised of their right to request the Ombudsman to have the matter dealt with as a PSC or an Ombudsman investigation. The CRP Officer is to record the complainant's request and PSC are to include this in their notification to the Ombudsman. This notification will be provided in the completed CRP Form (also advising unsuccessful resolution).
121. Where the CRP Officer forms an opinion the CRP will be unsuccessful, the CRP Officer is to suspend the CRP and notify the relevant CMT and Commander, PSC.
122. In the event of an unsuccessful CRP, the relevant CMT is to send a letter to the complainant detailing what action was taken to resolve their complaint and their right to contact the Ombudsman to have the matter reinvestigated. The letter will include the following paragraph:

"If you are dissatisfied with the outcome it is necessary for you to set out detailed reasons as to how the investigation was inadequate and forward these to the Ombudsman. However, please note, the Ombudsman may refuse to review your continued concern if satisfied the issues raised have been dealt with in the investigation".

In-Confidence

123. If the Ombudsman is satisfied the issues raised in the complaint are being or have been adequately dealt with in the CRP, the Ombudsman will refuse the request.
124. If the Ombudsman agrees with the request, the Ombudsman and the Commander, PSC will re-classify the complaint, and the Ombudsman will notify the complainant of the terms of the new investigation.

Member Dissatisfied

125. A member who is dissatisfied with the progress or the outcome of the CRP may make a written submission to the Commander, PSC. Upon receipt of the submission the Commander, PSC will consider the submission and if satisfied the CRP will be unsuccessful, notify the Ombudsman.
126. The Commander, PSC and the Ombudsman will re-classify the complaint if appropriate and the Ombudsman will notify the complainant of the terms of the new investigation.

Member's Rights

127. Evidence obtained from a member in the CRP cannot be used in any disciplinary investigation or proceedings against the member.
128. There will be no records kept on the personnel file of the member in respect to the results of any CRP.

Inquiries Reveal a Matter is More Serious

129. If inquiries reveal that the matter is more serious than first thought, or if evidence indicates the complaint is not suitable as a CRP, the CRP Officer is to suspend the inquiries and forward all documents to the Commander, PSC.
130. The following factors would lead to a suspension of the CRP:
- 130.1 identified inculpatory evidence warranting a formal PSC investigation;
 - 130.2 additional issues requiring further inquiry; and/or
 - 130.3 evidence of involvement of other member(s) in the police conduct.
131. The Commander, PSC and the Ombudsman will re-classify the complaint. The Ombudsman will notify the complainant of the terms of the new investigation.

Withdrawal of Complaint

132. If a complainant wishes to withdraw a minor complaint, it is to be confirmed in writing by the complainant and the CRP Officer and forwarded to PSC. The withdrawal should include the complainant's reasons for withdrawing the complaint.

In-Confidence

CRP Action Requirements

133. Complaints dealt with under the CRP are to be completed within **fourteen (14) days** of the complaint being received.
134. An application to extend the period may be made to the Commander, PSC at any time before the expiry of the **fourteen (14) days**. The application is to provide particulars of the reasons for the delay in finalising the CRP within the specified period. Applications will only be approved on the joint approval of the Commander, PSC and the Ombudsman. The 'CAP – Investigation Extension Request' is available in Standard Documents 'PSC' folder.
135. Once a CRP is resolved, the completed CRP Form is to be submitted to the Commander, PSC within **twenty four (24) hours** of the complaint being finalised.
136. Completed CRP Forms are to be forwarded by the Commander, PSC to the Ombudsman at the earliest opportunity but within **seven (7) days** of the complaint being finalised.

Part Eight – Professional Standards Command Investigation

137. There are three (3) types of investigations undertaken by or on behalf of PSC; those are:
- 137.1 **Preliminary Inquiry (PI)** - An investigation carried out by PSC or other member on behalf of PSC upon initial receipt of a CAP. The investigation is carried out to examine available material and allow for a considered recommendation to be made to the Ombudsman on the categorisation of the CAP;
- 137.2 **Category 2** - An investigation carried out by PSC or other member on behalf of PSC where the Commissioner or his/her delegate reports directly to the complainant (Part 7, Division 4, sub-division 2 and Part 7, Division 6, sub-division 1 of the *Ombudsman Act*). These are complaints relating to incidences of minor misconduct that are not suitable for CRP, or not sufficiently serious to be subject to a Category 1 classification; and
- 137.3 **Category 1** – An investigation carried out by PSC or other member on behalf of PSC where the Commissioner or his/her delegate reports to the Ombudsman, who considers the report and reports to the complainant (Part 7, Division 4, sub-division 2 and Part 7, Division 6, sub-division 2 of the *Ombudsman Act*). These are serious complaints relating to alleged serious misconduct or maladministration.
138. All three (3) kinds of investigations are evidence based and intended to collect evidence to either sustain or negate the grounds of the complaint.

In-Confidence

Preliminary Inquiry (PI)

Authorised Conduct of PI

139. The purpose of a PI is to source, secure and examine all relevant evidence upon initial receipt of a CAP. This is done to ensure that the Ombudsman is fully apprised of all the facts of a matter when making a determination on the classification of the complaint.
140. Although this is an initial inquiry and no formal determination of complaint classification has been made, investigative rigour is to still be applied through all stages of the PI.
141. The PI can involve any of the following actions by an investigator:
- 141.1 examination of PROMIS, IJIS or any other NTPFES computer systems;
 - 141.2 examination of all relevant CCTV footage including Watch House audio recordings;
 - 141.3 examination of any Territory Communications Section records including audio files of telephone calls and radio transmissions;
 - 141.4 examination of any written documentation relevant to the complaint including any notes made by a member;
 - 141.5 contact with a member to clarify any aspect of the complaint;
 - 141.6 contact with the complainant, a witness or other person to clarify any aspect of the complaint;
 - 141.7 examination of any legislation, policy or procedure relevant to the complaint;
 - 141.8 examination of any evidence the investigator deems relevant to the PI.
142. All evidence examined during the PI will be made available to the Ombudsman.
143. The PI is to be conducted within **ten (10) days** of receipt of the complaint unless an extension has been granted by the Ombudsman. Any extension of the time to complete a PI will be made by the Ombudsman on a case by case basis. Factors that can be considered by the Ombudsman are the size and complexity of the matter, the availability of witnesses or reasonable delays in sourcing other evidence.
144. The PI may result in PSC recommending to the Ombudsman that a complaint be dealt with in the following manner:
- 144.1 as a Category 1 CAP;
 - 144.2 as a Category 2 CAP;

In-Confidence

- 144.3 as a matter suitable for conciliation under Division 3 Part 7 of the *Ombudsman Act*;
- 144.4 as a matter suitable for the CRP;
- 144.5 as a CSI; or
- 144.6 the complaint should be declined under section 67 of the *Ombudsman Act*.

Category 2 PSC Investigation

Authorised Conduct of Category 2 Complaint

- 145. These are complaints relating to police misconduct that are not suitable for CRP or sufficiently serious, or of such a nature as to warrant a section 66(2)(d)(ii) Investigation (Category 1) or direct Ombudsman involvement (section 86 of the *Ombudsman Act*). This classification of complaint is not likely to result in criminal or disciplinary proceedings pursuant to Part IV of the PAA.
- 146. Category 2 complaints generally result in one (1) or more of the following actions:
 - training/education;
 - coaching/mentoring;
 - counselling;
 - Personal Improvement Plan;
 - managerial guidance;
 - reprimand or warning;
 - restricted duties;
 - caution – verbal or written; or
 - transfer by agreement.
- 147. Subject to any direction given by the Commissioner or the Ombudsman, a Category 2 investigation will normally be carried out with little oversight from the Ombudsman.
- 148. A complaint may become a Category 2 investigation due to an unsuccessful CRP or when evidence establishes the complaint is more serious than originally considered.
- 149. Notwithstanding the Ombudsman's decision that the complaint may be investigated by PSC, the complainant may, at any time, ask the Ombudsman to investigate the complaint.

In-Confidence

Assignment of Complaint to IO

150. If a complaint is classified as a Category 2 CAP and the Ombudsman did not instruct that the complaint was to be investigated by a PSC member, the Commander, PSC will notify the Commander of the relevant station/section/unit to arrange to have the complaint investigated.
151. The relevant Commander will assign the investigation to an appropriate IO. In determining who to allocate the CAP to, the relevant Commander is to consider:
- 151.1 whether the proposed IO's rank is above that of the subject member;
 - 151.2 if the proposed IO's skill, capacity and training is adequate to complete the CAP;
 - 151.3 the IO's leave requirements and/or other commitments; and
 - 151.4 any obvious conflict of interest (being a supervisor or manager of the subject member alone does not constitute a conflict of interest).

Functions of Investigating Officer

152. It is the function of the IO to collect and consider all relevant evidence available to either prove or disprove the allegations made against the subject member including:
- 152.1 collecting all relevant information and evidence (both inculpatory and exculpatory) relating to the grounds of complaint;
 - 152.2 investigating and reviewing the information and evidence;
 - 152.3 reaching a reasonable and logical conclusion; and
 - 152.4 preparing a report and other supporting documentation for the Commissioner or delegates' consideration.

Responsibilities of IO

153. The IO is to:
- 153.1 immediately declare any conflict of interest when a conflict or perceived conflict arises;
 - 153.2 conduct the investigation impartially and in a timely manner in accordance with the timeline section of Category 2 investigations below;
 - 153.3 conduct the investigation in a manner that preserves the subject member's common law rights to natural justice;
 - 153.4 maintain confidentiality in accordance with Instructions and Procedures: Internal and Sensitive Investigations Security and in accordance with Part Two of this General Order;

In-Confidence

- 153.5 comply with any instructions from the Ombudsman, Commissioner or Commander, PSC;
 - 153.6 regularly consult with the complainant about the conduct of the investigation; and
 - 153.7 if practicable and where it will not compromise the investigation regularly advice is to be provided to members involved of the status of the investigation.
154. The IO is to immediately contact the complainant and advise them of their assignment to the investigation and attempt to schedule an interview with the complainant or otherwise obtain a statement from them.
155. It is essential that the IO take all reasonable steps to obtain or secure the evidentiary material, if not already completed. Failure to take these critical steps early in the investigation will cause irreparable damage to the outcome of the investigation, especially if the evidence is likely to be lost with the passage of time.
156. A failure to secure evidentiary materials may be deemed a dereliction of duty.

Interim Report

157. A detailed Interim Report is to be submitted by the IO every three (3) weeks until the investigation is completed. The template is available from Standard Documents 'PSC' folder.

Final Report

158. At the completion of the investigation, the IO is to prepare a Final Report on the findings of the investigation. The Final Report – Section 92 – Category 2 template is located in Standard Documents 'PSC' folder. The report is to include an assessment of the conduct of the subject member and may include:
- 158.1 an assessment on whether the conduct of the subject member:
 - 158.1.1 constituted an offence or breach of discipline or was contrary to law;
 - 158.1.2 was unreasonable, unjust, oppressive or improperly discriminatory;
 - 158.1.3 was in accordance with an Act or a practice, procedure or policy that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
 - 158.1.4 was based either wholly or partly on a mistake of law or of fact;
 - 158.1.5 was otherwise wrong in the circumstances;
 - 158.1.6 exercised a power for an improper purpose or on irrelevant grounds; and/or

In-Confidence

- 158.1.7 in exercising a power in a particular way or refusing to exercise a power:
- (i) it meant that irrelevant considerations were taken into account in the course of reaching the decision to exercise the power in that way or to refuse to exercise the power; or
 - (ii) that a person was entitled at law to have been given, but was not given, the reasons for deciding to exercise the power in that way or to refuse to exercise the power; or
- 158.2 recommendations that one or more of the following actions be taken:
- 158.2.1 a member be charged with an offence;
 - 158.2.2 disciplinary action be taken against a member for a breach of discipline;
 - 158.2.3 conciliation in relation to the conduct of the member subject of the investigation be conducted;
 - 158.2.4 a decision made by the subject member be reconsidered, varied or reversed or reasons be given for a decision;
 - 158.2.5 the effects of a decision made by the subject member, act or omission be rectified, mitigated or altered; and
 - 158.2.6 an act, practice, procedure or policy on which a decision, act or omission was based be amended.
159. Findings in relation to the complaint allegations are to be provided as outlined within Part Ten of this General Order.
160. Any ancillary issues identified during the investigation are to be reported on.

Review – Complaint Management Division

161. A copy of the completed CAP file, including the report, a draft letter endorsing the report to the Ombudsman and a draft letter of response to the complainant is to be forwarded to the Superintendent, Complaint Management Division (CMD).
162. The Superintendent, CMD will review the investigation and documents and provide a report to the IO through their chain of command on any aspects of the investigation or documents that require further attention.

Review – Assistant Commissioner

163. A copy of the completed CAP file, including the report, a draft letter endorsing the report to the Ombudsman and a draft letter of response to the complainant is to be forwarded to the relevant Assistant Commissioner through the chain of command for review.

In-Confidence

164. The draft letter to the complainant is to advise of their right to ask the Ombudsman to have the complaint investigated by the Ombudsman under Part 7, Division 5, sub-division 2 of the *Ombudsman Act*. The letter will include the following paragraphs:

'If you are dissatisfied with any aspect of the investigation you may request the Ombudsman to consider reinvestigating your matter. In that event, it is necessary for you to set out detailed reasons as to how the investigation was inadequate, however please note, the Ombudsman must refuse this request if satisfied the issues raised in your complaint have been dealt with in the investigation.'

165. The IO is responsible for ensuring the investigation is fully recorded on BlueTeam including a detailed Investigation Diary and all relevant documentation or relevant evidence.
166. At the completion of the investigation, the IO is to ensure BlueTeam is actioned through the chain of command for review.

Functions of Assistant Commissioner

167. On 24 February 2012, the Commissioner of Police delegated his powers to Assistant Commissioners for the purposes of sections 92 and 93 of the *Ombudsman Act*.
168. The relevant Assistant Commissioner will review the CAP file for completeness and if the investigation is deficient, the file will be returned to the relevant Commander for amendment.
169. If/when the relevant Assistant Commissioner is satisfied the complaint has been fully investigated, the investigation file is to be provided to the Commander, PSC for review and when supported the Assistant Commissioner is to notify the:
- 169.1 complainant and the subject member of the outcome of the investigation; and
 - 169.2 Ombudsman, who is to be provided with a copy of the report along with any assessments or recommendations.
170. The Assistant Commissioner is responsible for ensuring that all outstanding recommendations relevant to the investigation outcome are completed and reported to the Commander, PSC to allow finalisation with the Ombudsman.

Functions of Commander

171. The relevant Commander is responsible for the quality and timeliness of all CAP investigations within their area of responsibility.
172. A record of all current CAPs is to be retained by the CMT.
173. The relevant Commander is responsible for ensuring BlueTeam is at an acceptable submission standard and is to return the case to PSC.

In-Confidence

174. Implementation of the actions and recommendations arising out of the complaint are to be dealt with by the relevant Commander if referred to them by the Assistant Commissioner or PSC.
175. Once completed, the relevant Commander is to report on the completed outcomes to the Commander, PSC through the relevant Assistant Commissioner.

Re-classification of Complaint

176. Where a complaint is being investigated as a PSC investigation, Category 2 Complaint and evidence establishes the complaint is more serious than initially considered, the investigator is to suspend the investigation and notify the Commander, PSC. The Commander, PSC is to immediately notify the Ombudsman of the suspension of the investigation and the reasons for it.
177. The Ombudsman will consult with the Commander, PSC on the re-classification of the complaint. In the event the Ombudsman and the Commander, PSC do not agree on the relevant classification, the Ombudsman's decision is final.
178. The Ombudsman is to notify the complainant how the complaint is to be investigated.
179. Where a complainant makes a statement requesting the CAP to be withdrawn, PSC will seek authorisation from the Ombudsman to discontinue the investigation. Should the Ombudsman agree that the CAP is to be discontinued; the CAP file is to be returned to the PSC for case finalisation.

Ombudsman Review

180. In the event the complainant exercises their rights and asks the Ombudsman to re-investigate the complaint, the Ombudsman will consider the request. The Ombudsman will refuse the request if satisfied the complaint has been adequately dealt with.

Requirements when Serious Breach of Discipline Identified

181. Should a serious breach of discipline is identified during the investigation, the IO is to suspend the inquiries and forward all the documents to the Commander, PSC.

Commissioner Notification to the Ombudsman

182. Should disciplinary proceedings or criminal charges be brought against the subject member during the CAP investigation, the Commissioner is to notify the Ombudsman within **five (5) days** of the proceedings or charges taking place pursuant to section 106 of the *Ombudsman Act*.

In-Confidence

Deferral of Investigation

183. An investigation may be deferred or discontinued by the Ombudsman at any time if:
- 183.1 proceedings against the subject member in relation to the conduct have been, or are about to be, commenced in a court or tribunal; or
 - 183.2 disciplinary procedures have been, or are about to be, started against the subject member.
184. An investigation may be deferred pending the finalisation of court proceedings or disciplinary procedures.

Timelines

185. PSC investigations are to be completed within **six (6) weeks** of the complaint being received.
186. The progress of all CAP matters under investigation will be reviewed at each CMT. The direction the CAP investigation is proceeding, the extent of work completed to date and any outstanding evidence will be provided to the CMT by the IO. This progress is to be recorded in the CMT minutes.
187. If required, additional updates can be sought from the IO by the Superintendent, CMD outside of the CMT process.
188. An application to extend the period may be made at any time before the expiry of the **six (6) weeks**. The application is to provide:
- 188.1 detail on the investigations carried out to date;
 - 188.2 details of outstanding inquiries;
 - 188.3 particulars of the reasons for the delay in finalising the investigation within the specified period;
 - 188.4 anticipated outcomes of the investigation; and
 - 188.5 approximate time frame when the file will be completed and submitted.
189. Applications for extensions of less than **seven (7) days** are approved by the relevant Assistant Commissioner and are to be provided to the Commander, PSC on approval.
190. Extensions greater than **seven (7) days** are approved by the Deputy Commissioner and are to be provided to the Commander, PSC on approval. The 'CAP – Investigation Extension Request' is available in Standard Documents 'PSC' folder.
191. The application should include a copy of all the paperwork available to date on the CAP investigation file.

In-Confidence

192. Every **three (3) weeks** thereafter, the IO is to provide the Commander, PSC with a detailed interim report until the investigation is completed. These interim reports are to include the same information as provided in the application for an extension of time and copies of any new documents not previously provided.

Category 1 PSC Investigation

Authorised Conduct of Category 1 Complaint

193. Category 1 complaints relate to serious police misconduct. Police misconduct will result in a Category 1 complaint if the conduct:
- 193.1 involved alleged criminal behaviour;
 - 193.2 involved a breach of some other Act;
 - 193.3 was, or appeared to be, deliberate;
 - 193.4 resulted in the use of a firearm or other weapon;
 - 193.5 involved a threat or harassment of a serious nature;
 - 193.6 was recklessly indifferent to the negative outcome of the specific conduct;
 - 193.7 resulted in death or injury, major property damage or financial loss to the claimant or some other person;
 - 193.8 constitutes an issue which is in the public interest; or
 - 193.9 is likely to identify significant questions of police practice or procedure.
194. Category 1 complaints, when sustained, may result in one (1) or more of the following outcomes pursuant to Part IV of the PAA:
- counselling;
 - formal caution in writing;
 - good behaviour bond (GBB);
 - fine;
 - pay compensation/restitution;
 - transfer;
 - reduce rate of salary;
 - suspension – paid/unpaid;
 - demotion; or
 - dismissal.
195. A Category 1 complaint will receive Ombudsman oversight and will be reviewed and reported on by the Ombudsman.

In-Confidence

196. Complaints may be classified as a Category 1 complaint because of:
- 196.1 the serious nature of the alleged police misconduct; or
 - 196.2 the complaint had been re-classified:
 - 196.2.1 because evidence established the police misconduct was more serious than first considered; or
 - 196.2.2 at the request of the complainant to the Ombudsman.

Assignment of Complaint to Investigating Officer

197. Allegations, which if true, would involve substantial breaches of the criminal law are to be assigned in consultation with the Commander, PSC to PSC investigators, Crime Division members, Commissioned Officers or an experienced criminal investigator.

Functions of IO

198. It is the function of the IO to collect and consider all relevant evidence available to either prove or disprove the allegations made against the subject member. It includes:
- 198.1 collecting all relevant information and evidence (both inculpatory and exculpatory) relating to the grounds of complaint;
 - 198.2 investigating and reviewing the information and evidence;
 - 198.3 reaching a reasonable and logical conclusion; and
 - 198.4 preparing a report and other supporting documentation for the Ombudsman's consideration.

Responsibilities of IO

199. The IO is to:
- 199.1 immediately declare any conflict of interest when a conflict or perceived conflict arises;
 - 199.2 conduct the investigation impartially and in a timely manner in accordance with the timeline section of Category 1 Investigations of this General Order;
 - 199.3 conduct the investigation in a manner that preserves the subject member's common law rights to natural justice;
 - 199.4 maintain confidentiality in accordance with Instructions and Procedures, and in accordance with Part Two of this General Order;
 - 199.5 comply with any instructions from the Ombudsman, Commissioner or Commander, PSC;
 - 199.6 regularly consult with the complainant about the conduct of the investigation; and

In-Confidence

- 199.7 if practicable and where it will not compromise the investigation, regular advice is to be provided to members involved of the status of the investigation.
200. The IO is to immediately contact the complainant, advise them of their assignment to the investigation and attempt to schedule an interview with the complainant or otherwise obtain a statement from them.
201. It is essential the IO take all reasonable steps to obtain or secure the evidentiary material, if not already completed. Failure to take these critical steps early in the investigation will cause irreparable damage to the outcome of the investigation, especially if the evidence is likely to be lost with the passage of time.
202. A failure to secure the evidentiary materials may be deemed a dereliction of duty.

Interim Report

203. A detailed Interim Report is to be submitted by the IO every **three (3)** weeks until the investigation is completed. The template is available from Standard Documents 'PSC' folder.

Final Report

204. At the completion of the investigation, the IO is to prepare a Final Report on the findings of the investigation. The Final Report – Section 95 – Category 1 template is located in Standard Documents 'PSC' folder. The report is to include an assessment of the conduct of the subject member and may include:
- 204.1 an assessment on whether the conduct of the subject member:
- 204.1.1 constituted an offence or breach of discipline or was contrary to law;
 - 204.1.2 was unreasonable, unjust, oppressive or improperly discriminatory;
 - 204.1.3 was in accordance with an Act or a practice, procedure or policy that is, or may be unreasonable, unjust, oppressive or improperly discriminatory;
 - 204.1.4 was based either wholly or partly on a mistake of law or of fact;
 - 204.1.5 was otherwise wrong in the circumstances;
 - 204.1.6 exercised a power for an improper purpose or on irrelevant grounds; and/or
 - 204.1.7 in exercising a power in a particular way or refusing to exercise a power:
 - (i) it meant that irrelevant considerations were taken into account in the course of reaching the decision to exercise the power in that way or to refuse to exercise the power; or

In-Confidence

- (ii) that a person was entitled at law to have been given but was not given the reasons for deciding to exercise the power in that way or to refuse to exercise the power; or
- 204.2 recommendations that one (1) or more of the following actions be taken:
- 204.2.1 a member be charged with an offence;
 - 204.2.2 disciplinary action be taken against a member for a breach of discipline;
 - 204.2.3 a decision made by the subject member be reconsidered, varied or reversed or reasons be given for a decision;
 - 204.2.4 the effects of a decision made by the subject member, act or omission be rectified, mitigated or altered; and/or
 - 204.2.5 an act, practice, procedure or policy on which a decision, act or omission was based be amended.
205. Findings in relation to the complaint allegations are to be provided as outlined within Part Ten of this General Order.
206. Any ancillary issues identified during the investigation are to be included in the report.
207. The IO is responsible for ensuring that the investigation is fully recorded on BlueTeam including a detailed Investigation Diary and all relevant documentation or relevant evidence. At the completion of the investigation, the IO is to ensure BlueTeam is actioned through the chain of command for review.

Review – Complaint Management Division

208. A copy of the completed CAP file including the report and a draft letter endorsing the report to the Ombudsman is to be forwarded to the Superintendent, CMD.
209. The Superintendent, CMD will review the investigation and documents and provide a report to the IO through their chain of command on any aspects of the investigation or documents that require further attention.

Responsibilities of Assistant Commissioner

210. If the investigation is not being undertaken by PSC, the relevant Assistant Commissioner will review the CAP file for completeness, and
- 210.1 if the investigation is deficient, the CAP will be returned to the relevant Commander for amendment; or

In-Confidence

- 210.2 if approved, a copy of the completed CAP file, and a draft letter to the Ombudsman (under the signature of the Commissioner of Police or delegate) is to be sent to the Commander, PSC for review.
211. The Assistant Commissioner, on receipt of any outstanding recommendations relevant to the investigation outcome after the investigation is reviewed, is responsible for their completion. Completed actions are to be reported to the Commander, PSC to allow finalisation with the Ombudsman.

Functions of PSC

212. It is the function and responsibility of the Commander, PSC to review the investigation file including the final investigation report and forward it to the Commissioner or his/her delegate for assessment, comments and signing.
213. It is the function and responsibility of the Commander, PSC to ensure all required actions are completed and reported to the Ombudsman after the receipt of an Assessment Report provided to the Assistant Commissioner by the Ombudsman.

Functions of Deputy Commissioner as Delegate to Commissioner

214. All outstanding action items arising from a complaint are to be allocated to the Chair of the relevant CMT for completion. The Chair will report back to the Commander, PSC at the completion of all complaints.
215. On 1 April 2014, the Commissioner of Police delegated his powers to the Deputy Commissioner for the purposes of sections 95 and 96 of the *Ombudsman Act*.
216. On receipt of the CAP file, the Deputy Commissioner will consider the investigation and make an assessment of the conduct of the subject member together with any other comments the Deputy Commissioner considers appropriate.
217. Unless the Deputy Commissioner directs a further investigation be conducted, the CAP report and the Deputy Commissioner's assessment along with any comments will be forwarded to the Ombudsman.

Finalisation Process

218. The Ombudsman will consider the Assessment Report, and any comments made by the Deputy Commissioner and notify the Deputy Commissioner of the Ombudsman's findings.
219. The Deputy Commissioner will consider the Ombudsman's recommendations, if any, and notify the Ombudsman whether the Deputy Commissioner:
- 219.1 agrees with the Ombudsman's assessment and recommendations; or
- 219.2 does not agree with the Ombudsman's assessment and recommendations.

In-Confidence

220. If the Deputy Commissioner supports the Ombudsman's assessment and recommendations, the Ombudsman will notify the complainant and the subject member of the outcome of the CAP, and if any action is to be taken. Generally a request will be made by the Ombudsman for the Deputy Commissioner to advise the subject member of the outcome.
221. If the Deputy Commissioner does not support the Ombudsman's assessment and recommendations, the Ombudsman may:
- 221.1 confirm or vary the assessment or recommendation; or
 - 221.2 substitute a new assessment or recommendation.
222. The Deputy Commissioner is to notify the Ombudsman of the steps taken to give effect to the Ombudsman's recommendation as agreed or as substituted or varied. The notice to the Ombudsman is to be made within **five (5) days** of the action taking place.
223. Where the Deputy Commissioner does not implement the Ombudsman's recommendations, the Deputy Commissioner is to provide written notice as to his reasons for not taking the steps.
224. The Ombudsman may provide the Police Minister with a copy of the Ombudsman's report along with the Deputy Commissioner's written notice. The Ombudsman may also provide the Police Minister with a copy of a report for tabling in the Legislative Assembly.

Requirements when Serious Breach of Discipline Identified

225. Should a serious breach of discipline be identified during the investigation, the IO is to suspend the inquiries and forward all the documents to the Commander, PSC.

Commissioner's Notification to the Ombudsman

226. Should disciplinary proceedings or criminal charges be brought against the subject member during the CAP investigation, the Commissioner will notify the Ombudsman within **five (5) days** of the proceedings or charges being laid. This function is generally fulfilled by the Commander, PSC or his delegate.

Deferral of Investigation

227. An investigation may be deferred or discontinued by the Ombudsman at any time if:
- 227.1 proceedings against the subject member in relation to the conduct have been or are about to be commenced in a court or tribunal; or
 - 227.2 disciplinary procedures have been or are about to be started against the subject member.
228. An investigation may be deferred pending the finalisation of court proceedings or disciplinary procedures.

In-Confidence

Timelines

229. Within **three (3) weeks** of receipt of a CAP, a detailed Interim Report is to be given to the Commander, PSC. The Interim Report is to detail the progress of and the direction in which the CAP investigation is proceeding, the extent of work completed to date and outstanding evidence.
230. PSC investigations are to be completed within **six (6) weeks** of the complaint being received.
231. An application to extend the period may be made at any time before the expiry of the **six (6) weeks**. The application is to provide:
- 231.1 detail on the investigations carried out to date;
 - 231.2 details of outstanding inquiries;
 - 231.3 particulars of the reasons for the delay in finalising the investigation within the specified period;
 - 231.4 anticipated outcomes of the investigation; and
 - 231.5 approximate timeframe when the file will be completed and submitted.
232. Applications for extensions of less than **seven (7) days** are approved by the relevant Assistant Commissioner and are to be provided to the Commander, PSC on approval.
233. Extensions greater than **seven (7) days** are approved by the Deputy Commissioner and are to be provided to the Commander, PSC on approval. The 'CAP – Investigation Extension Request' is available In Standard Documents 'PSC' folder.
234. The application should include a copy of all the paperwork available to date on the CAP investigation file.
235. Every **three (3) weeks** thereafter, the IO is to provide the Commander, PSC with a detailed interim report until the investigation is completed. These interim reports are to include the same information as provided in the application for an extension of time and copies of any new documents not previously provided.

Part Nine - Ombudsman Investigation

236. The Ombudsman may decide to investigate a CAP:
- 236.1 on the Ombudsman's own initiative under section 14 of the *Ombudsman Act*;
 - 236.2 where the Ombudsman considers the complaint should be investigated by the Ombudsman under section 86 of the *Ombudsman Act*; or
 - 236.3 where parliamentary reference is made for the investigation of police conduct under section 87(1)(b) of the *Ombudsman Act*.

In-Confidence

237. The Ombudsman may or may not notify the Commissioner of the investigation.
238. If the Ombudsman's draft report contains an adverse finding about police conduct, the Ombudsman is to provide the member and the Commissioner with reasonable details about the adverse comments and allow the member the opportunity of making any submissions. Any submissions are to be dealt with in the report.

Finalisation Process

239. Following completion of the investigation, the Ombudsman is to provide the Commissioner with a copy of a draft report of the investigation. The report is to contain an assessment and recommendations.
240. The Commissioner will notify the Ombudsman whether the Commissioner:
- 240.1 agrees with the Ombudsman's assessment and recommendations; or
 - 240.2 does not agree with the Ombudsman's assessment and recommendations.
241. If the Commissioner supports the Ombudsman's assessment and recommendations, the Ombudsman will notify the complainant and the subject member of the outcome of the CAP and of any action to be taken.
242. If the Commissioner does not support the Ombudsman's assessment and recommendations, the Ombudsman may:
- 242.1 confirm or vary the assessment or recommendation; or
 - 242.2 substitute a new assessment or recommendation.
243. The Commissioner will notify the Ombudsman of the steps taken to give effect of the Ombudsman's recommendation as agreed, or as substituted or varied. Written notice to the Ombudsman is to be made within **five (5) days** of the taking of the action.
244. Where the Commissioner does not implement the Ombudsman's recommendations, the Commissioner is to provide written notice as to the Commissioner's reasons for not taking the steps.
245. The Ombudsman is to provide the Police Minister with a copy of the Ombudsman's report along with the Commissioner's written notice. The Ombudsman is to also provide the Police Minister with a copy of a Final Report for tabling in the Legislative Assembly.

Part Ten –Complaint Findings

246. In the interests of complainants and the subject member, agreement has been made with the Ombudsman to adopt a consistent approach to respective findings on a complaint. The broad categories agreed below are intended to operate in a flexible manner:

In-Confidence

- 246.1 **unresolved** - Given differing versions, where the Ombudsman and PSC are unable to come to any conclusion about the allegation. This finding may be used in respect of allegations when the only available evidence is the complainant's version against that of the members or all witnesses provide a differing/inconsistent version;
- 246.2 **no evidence to support the allegation** - Based on the material, there is no evidence to support the allegation. This finding may apply to an allegation of minor assault (e.g. push/slap) and there is no medical evidence to support the allegation, there are no witnesses to the incident, there is no video evidence or other members present to positively support the fact that it did or did not occur;
- 246.3 **insufficient evidence to sustain the allegation** - Based on the material there is some evidence to support the complainant, but it is insufficient to sustain the allegation. This may apply where there is some evidence to support the allegation but the quality of the evidence is unreliable, or taking into account other evidence (e.g. the medical evidence or the evidence of the police), the evidence as a whole is insufficient to sustain the allegation;
- 246.4 **action/conduct was not found to be unreasonable given the circumstances** - This finding may be used in cases where a member may have done something unusual, prima facie or questionable but the surrounding circumstances are such that it is inappropriate to make an adverse finding against the member;
- 246.5 **the police action/decision was reasonable** - This is a positive finding to the effect that the Ombudsman/PSC supports the action/decision by the member;
- 246.6 **the allegation is sustained** - Where there is sufficient evidence to sustain the allegation on the balance of probability; and
- 246.7 **the allegation is found to be wilfully false** - Where an investigation into a CAP reveals that the allegation was wilfully false that finding will be brought to the attention of the Ombudsman to consider a prosecution under the *Ombudsman Act*. Any criminal charges arising from a wilfully false allegation will be referred to the Commander, PSC for action.
247. In order to facilitate a prompt finalisation of the CAP, a complaint finding is to include the recommended action(s) to be taken against the subject member, if any.

Part Eleven – Miscellaneous

Persons in Custody on Sentence or Remand – Complaints to Ombudsman

248. From time to time, persons serving a sentence or held in remand in a gazetted police prison may express a wish to lodge a complaint directly with the Ombudsman.

In-Confidence

249. If it is not practicable to facilitate communication between the person and the Ombudsman's Office by the most expedient means, a member to whom such a request is made will facilitate that request by providing the person with the necessary writing material and a suitable envelope, addressed to:
- The Ombudsman
GPO Box 1344
DARWIN NT 0801
250. A member to whom such correspondence is given will arrange for the correspondence to be sent to the Ombudsman as soon as practicable. Correspondence from the Ombudsman to a person in custody will be delivered to that person as soon as practicable.
251. Where it is deemed inappropriate to provide writing material to a person in police custody, and that person is in custody in Darwin, or is to be transferred to Darwin, the Ombudsman's Office is to be advised by the Divisional Officer or the senior member on duty of the person's desire to make a complaint. A suitable time for an interview with the person, if requested, is to be negotiated with that Office.
252. Members may be required to justify withholding writing materials from a person in custody. Generally, the only acceptable reason will be indications that the person may use the materials to cause injury to him/herself or someone else.

Non-English Speaking Backgrounds

253. To assist complainants from non-English speaking backgrounds the 'tenor and spirit' of the 'Anunga' Guidelines as described by General Order – Questioning people who have difficulties with the English Language – The Anunga Guidelines, are to be applied by the IO during any interview process. This is particularly relevant when considering the use of interpreters generally, and any request by an indigenous complainant to have a legal representative present at interview.

Intoxicated Complainants

254. If at the time of making a complaint the complainant is agitated, abusive, distraught or intoxicated by drugs or alcohol to such an extent that clear or rational discussion about the CAP is difficult, every effort is to nevertheless be made to record the contact details of the complainant with basic information about the CAP.
255. The actions as detailed within paragraphs 74-75 of this General Order should as far as practicable be complied with. The supervisor/OIC is to terminate immediate progression of the CAP and request that the complainant return at a specified date and time or, alternatively, contact the complainant within **twenty four (24)** hours to arrange a time. Irrespective, follow-up action is to be taken to ascertain the legitimacy and progression of the CAP.

In-Confidence

256. Preliminary inquiries should be made in an attempt to determine the validity of the allegation or secure any potential evidence (such as Watch House footage, CCTV footage, radio communication logs etc.) however formal or lengthy investigation should be deferred until a complaint is received from a sober complainant.

False Complaints

257. Complaints that after an initial inquiry appear to be vexatious or vindictive may be made the subject of a full investigation with a view, where appropriate, for action being taken against the complainant. In other respects however, such complaints may be dealt with as a minor matter.
258. Where an investigation into a CAP reveals that the complaint was wilfully false, that suspicion will be brought to the attention of the Ombudsman to consider prosecution pursuant to the *Ombudsman Act*. Any criminal charges arising from a false complaint will be referred by the Ombudsman Office to PSC for action.

Appeal and Review

259. The *Ombudsman Act* does not provide any rights of appeal or review from a decision of the Ombudsman.
260. Section 20 of the *Ombudsman Act* permits a person making an application to the Supreme Court on the question of the Ombudsman's jurisdiction to conduct an investigation.

Forms

261. The following forms apply to this General Order and are located in Standard Documents 'Professional Standards Command (PSC)' folder:
- Confidentiality Agreement;
 - Complaint Resolution Process (CRP) Form;
 - Interim Report;
 - CAP – Investigation Extension Request;
 - Final Report – Section 92 – Category 2; and
 - Final Report – Section 95 – Category 1.

Da Costa, Odette

From: Anticich, Nick
Sent: Friday, 8 May 2020 11:02
To: Pollock, Scott
Cc: O'brien, James J; Anticich, Nick
Subject: RE: Meeting with AC Anticich / Dole / O'Brien

Hi Scott, thanks for this advice. I am away mid-week but hope we can meet on Friday to discuss.

Can I ask you provide a report on those matters you have identified as deficiencies in the investigation prior to the meeting via Commander O'Brien to me.

Also if you can point me to the provisions of the Coroners Act and or our general orders that guide your coronial inquiries. I am still coming to grips with the NT model and how it all works.

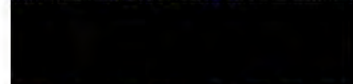
I have asked Commander O'Brien to attend that meeting at which I will explain his role.

Regards

Nick Anticich APM | Assistant Commissioner Crime, Intelligence and Capability
 NT Police, Fire and Emergency Services
 NAB HOUSE, Level 6 – 71 Smith Street, Darwin
 PO Box 39764, WINNELLIE NT 0821
 P. [REDACTED] e. [REDACTED] | www.pfes.nt.gov.au



This and the following "1" page is the annexure marked
 "AA-02" referred to in the AFFIDAVIT
 of NICHOLAS ANTICICH
 declared/sworn/affirmed before me this 3
 day of SEPTEMBER 20 22



David Andrew Bazem Reg. No. 25917
 A Justice of the Peace for Western Australia

From: Pollock, Scott
Sent: Thursday, 7 May 2020 9:52 PM
To: Anticich, Nick
Subject: FW: Meeting with AC Anticich / Dole / O'Brien

Sir, I seek clarification around the last dot point mentioned in S/Sgt Morgan's email (highlighted below) as the direction appears contrary to the requirements of the Coroners Act and our own Death in Custody Investigation policy. As the current 'Commissioned Officer In Charge' of the Coronial Investigation it is apparent to me that certain policies and procedures have not been complied with by the investigation team (some intentionally/some perhaps inadvertently). I will be reporting my concerns through to the Deputy Commissioner (via your office) when I submit my 6 monthly report as required under the Death in Custody General Order (due next week). I hope I am not misinterpreting the comments below but I can assure you that the Coroner will examine in detail all issues into the lead up to Walkers death and the standard of the investigation and compliance with policy (and previous coronial recommendations) post his death. I expect Rolfe's defence team will do the same throughout the criminal trial.

S/Sgt Morgan also mentioned that it was raised in the meeting today how often I meet with the Deputy Coroner. I last spoke with the Deputy Coroner (by phone) about a month ago when I informed him that the coronial

investigation had stalled somewhat since COVID 19 took off and had impeded our ability to travel and complete tasks in a timely manner. Prior to that was months ago when the Coroner wanted Police to consider appointing Dr. Freckleton. I mentioned to you when we last met (16 April) that I do not usually keep in touch with the Deputy Coroner unless some major issue arose that required his immediate attention. If such a situation were to arise I can assure you that would be briefed prior to me consulting the Deputy Coroner.

I will be back in the office (4th floor NAB) and available from Wednesday next week to discuss matters further if required.

Regards

Scott

Scott A. Pollock | Superintendent
 COVID-19 EOC 'N' Shift Incident Controller | Northern Territory Police Force
 EOC Motorsports House, Hidden Valley, Berrimah
 P.O. Box 39764 Winnellie, Northern Territory 0821
 p... | e... | www.police.nt.gov.au



From: Morgan, Lee < >
 Sent: Thursday, 7 May 2020 3:45 PM
 To: Pollock, Scott < >
 Subject: Meeting with AC Anticich / Dole / O'Brien

Sir, as discussed on the phone.

I met with AC Anticich and Commanders Dole and O'Brien this morning. The following matters were discussed;

- New Command Structure with Commander O'Brien sitting between you and the AC
- Anticich and Dole and maybe O'Brien are planning to meet with the Coroner next week.
- A Terms of Reference for a review in to the IRT has been completed. The review will be completed by Supt Gill.
- AC was keen for the enquiries into the training Rolfe received OS to progress.
- A JMC structure will be in place over the top of the Charwell Team.
- The Institutional Response Working Group is to be established / progressed.
- Weekly meeting between yourself and O'Brien.
- O'Brien will report regularly to the Institutional Response Working Group.
- There was a clear message that we should not be looking at the Criminal Investigation and that the Coroner should only be interested in what happened before Walker's death and not after.

I think that captures most of the content covered.

Lee Morgan | Detective Senior Sergeant
 Op Charwell - Coronial Investigation | NT Police, Fire and Emergency Services
 Peter McAulay Centre
 814 McMillans Rd, Knuckey Lagoon, NT, 0828
 m... | e... | www.pfes.nt.gov.au

Da Costa, Odette

From: Anticich, Nick
Sent: Tuesday, 9 June 2020 15:28
To: Murphy, Michael; Smalpage, Murray; Dole, Martin; O'brien, James J; Proctor, David; Pollock, Scott; Morgan, Lee; Gill, Shaun; Griffiths, Robert; Lau, Sandy; Moore, David (Police)
Cc: Anticich, Nick
Subject: Charwell Coronial Investigation Team

All,
I have managed to contact all of you by phone except for Scott, who I think is at the EOC and may be on shift.

This is to advise Commander Dave Proctor will be returning to his substantive role but importantly will now have oversight and management of the Coronial Investigation team.

I propose a Coronial JMC meeting next week, hopefully Monday between the Coronial team, Dave and I at NAB.

I am hoping Dr Ian Freckelton will be here shortly for his initial briefing in relation to our Operational Response to matters identified during the Coronial Investigation.

Regards

Nick Anticich APM | Assistant Commissioner Crime, Intelligence and Capability
NT Police, Fire and Emergency Services
NAB HOUSE, Level 6 – 71 Smith Street, Darwin
PO Box 39764, WINNELLIE NT 0821
p. [redacted] | e. [redacted] | www.pfes.nt.gov.au



This and the following "...2..." pages is the annexure marked
"NAA-03" referred to in the ... AFFIDAVIT ...
of ... NICHOLAS ANTICICH ...
declared/sworn/affirmed before me this ... 3 ...
day of SEPTEMBER ... 21 ...

[redacted signature]

David Andrew Bazen Reg. No. 29977
A Justice of the Peace for Western Australia

Da Costa, Odette

From: Proctor, David
Sent: Tuesday, 9 June 2020 16:10
To: Anticich, Nick
Subject: Re: Charwell Coronial Investigation Team

No worries later in the week suits will give me time to get started on reading stuff

David Proctor
Commander
DV & Prevention
NT Police

On 9 Jun 2020, at 15:49, Anticich, Nick <[REDACTED]> wrote:

Hi Dave I am off to Yeundemu Tuesday, might have to be later in the Week. I will ask Rob/Odette to sort it.

Rgds

NA

From: Proctor, David <[REDACTED]>
Sent: Tuesday, 9 June 2020 3:37 PM
To: Anticich, Nick <[REDACTED]>
Subject: Re: Charwell Coronial Investigation Team

Sir

Just realised I have medical appointments on Monday and Tuesday can we schedule a meeting for Wednesday my apologies they are specialist appointments so I can't change them

David

David Proctor
Commander
DV & Prevention
NT Police

On 9 Jun 2020, at 15:27, Anticich, Nick <[REDACTED]> wrote:

All,

I have managed to contact all of you by phone except for Scott, who I think is at the EOC and may be on shift.

This is to advise Commander Dave Proctor will be returning to his substantive role but importantly will now have oversight and management of the Coronial Investigation team.

I propose a Coronial JMC meeting next week, hopefully Monday between the Coronial team, Dave and I at NAB.

I am hoping Dr Ian Freckelton will be here shortly for his initial briefing in relation to our Operational Response to matters identified during the Coronial Investigation.

Regards

Nick Anticich APM | Assistant Commissioner Crime, Intelligence and Capability
NT Police, Fire and Emergency Services
NAB HOUSE, Level 6 – 71 Smith Street, Darwin
PO Box 39764 WINNELLIE NT 0821
p. [REDACTED] | e. [REDACTED] | www.pfes.nt.gov.au

<image011.png.awsec>

<image012.png.awsec>

<image013.png.awsec>

<image014.png.awsec>

<image015.png.awsec>



NORTHERN TERRITORY OF AUSTRALIA
Office of the Coroner

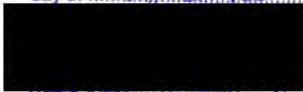
Our ref: A051/2019

Via email

Assistant Commissioner Anticich APM
Crime, Intelligence & Capability
NAB House
DARWIN 0800

This and the following "1" pages is the annexure marked
"NAA-04" referred to in the AFFIDAVIT
of NICHOLAS ANTICICH
declared/sworn/affirmed before me this 3
day of September 2022

Dear Assistant Commissioner


David Andrew Bazen Reg. No. 29977
A Justice of the Peace for Western Australia

Re: Walker Death Investigation

I refer to the meeting between you and Commander Dole and the Coroner and myself on 26 May 2020.

The Coroner has asked that I correspond with you to emphasise an issue that has caused concern. It relates to your question as to how much interest we have in what happened after the death and specifically the criminal investigation.

You will recall that the Coroner indicated that it was crucial that be fully investigated for its quality and efficacy.

The concern springs from that question coming at this time given what has been discussed previously with you and your Commander. For instance:

1. 19 November 2019 – we discussed the need for a gold standard investigation and witness statements to be taken with all expedition and that police officers should be ordered to make statements by the hierarchy if there was any refusal;
2. 22 November 2019 – you stressed that there was no pushback or lack of cooperation from any police officers in relation to the provision of statements. We stressed that they should be taken quickly, as if comparison was made with non-police investigations (like Challis) there

Nichols Place
Cnr Cavanagh & Bennett Sts.
DARWIN NT 0800

GPO Box 1281
DARWIN NT 0801
Telephone: (08) 8999 7770
Facsimile: (08) 8999 5128

was already significant delay. At that meeting it was stressed that there should be a thorough investigation as to why statements were not taken in the first few days when Major Crime were on the ground and why family and the community were not advised Mr Walker was deceased once reinforcements were on the ground. It was suggested that the issue may be characterised as a police investigating police problem.

3. 15 January 2020 – We had a conversation where we indicated our concern that senior police had not provided statements and asked whether we needed to get involved.
4. 29 January 2020 – You assured us that there were no problems with the hierarchy giving statements (with the exception only of the AC in Alice Springs).

We have no further information to suggest that as of this date senior officers involved in the making critical decisions have provided statements.

Your question, coming more than seven months after these issues were first discussed might be interpreted as an indication of continued resistance by the hierarchy to providing statements. We hope not.

We once more ask that statements from all police officers who had a part in any decisions relating to this death and the events that followed, including the death investigation be provided to Superintendent Scott Pollock with all due expedition.

Yours sincerely,



~~Kevin Currie~~
Counsel Assisting the Coroner
29 May 2020

2176



ASSISTANT COMMISSIONER
CRIME, INTELLIGENCE & CAPABILITY

A0512018 : Your Ref
04F202353 : Our Ref

Mr Kelvin Currie
Deputy Coroner
Office of the Coroner
GPO Box 1281
DARWIN NT 0801

Via email: [Redacted]

Dear Deputy Coroner, *Kevin*

Thank you for your letter of 29 May 2020 following our meeting of 26 May 2020.

For clarity, the issue that caused me concern at our meeting was the jurisdiction of the Coroner over a criminal investigation and actions that were not relevant to the cause of death. The explanation by the Coroner that these may become relevant should a prosecution fail, are in my mind valid and addressed my concern. I support the rationale of the Coroner's interest.

Your letter has raised a number of issues that if factually correct, are of grave concern to me. I have instituted immediate enquiries to ascertain the facts.

I will respond by letter at the earliest opportunity to address your concerns.

Yours sincerely

[Redacted Signature]

Nick Anticich
Assistant Commissioner

29 May 2020

"This and the following" pages is the annexure marked
"NACOS" referred to in the ... AFFIDAVIT
of NICHOLAS ANTICICH
declared/sworn/affirmed before me this 3
day of SEPTEMBER 21

[Redacted Signature]
David Andrew Bazen Reg. No. 29977
A Justice of the Peace for Western Australia

Northern Territory Police



memo

To: Assistant Commissioner, Crime, Intelligence and Capability

From: Superintendent, Operation Charwell Coronial Investigation

Subject: Operation Charwell Coronial Investigation – Outstanding Police Statements

PROMIS: 9129856

TRM File:

TRM Doc:

Date: 02/06/2020

As requested I provide you with a list of Police members who the Coronial Investigation Team seek either statements or clarifying information from;

1. Deputy Commissioner Michael Murphy APM – has previously committed to providing a statement to the Coronial Investigation Team some months ago and was in the process of finalising same. Statement yet to be received.
2. Assistant Commissioner Dr Narelle Beer – has information that may be of relevance to the Criminal Investigation Team. They have not pursued her for a follow up statement. She contacted me on 27/5/2020 requesting to meet and has further requested that I provide her questions in advance of providing a secondary statement.
3. Assistant Commissioner Nick Anticich APM – In the Investigation Management Committee meeting that you attended on Sunday 10 November 2019 the following 'critical decision' was recorded in PROMIS;

*Prepare for interview of Zac ROLFE.
 Interview to be conducted as a criminal interview.
 Interview to be delayed to allow for preparation.
 ROLFE not to be compelled to complete any Use of Force documentation.
 No Coroner's Authority to be enacted.*

This and the following "2" pages is the annexure marked "NAA-06" referred to in the AFFIDAVIT of NICHOLAS ANTICICH declared/sworn/affirmed before me this 2 day of September, 2022

David Andrew Bazer Reg. No. 29977
 A Justice of the Peace for Western Australia

What was the rationale behind these decisions (potentially perceived as favourable to Rolfe)

Were you made aware of the social gathering at Rolfe's address on the Monday following the shooting – at a time when Rolfe was yet to be interviewed – involving a gathering of police witnesses to the Yuendumu shooting?

Was Rolfe brought to Darwin with the intention to arrest him rather than to allow him to return to his home state? Notes from members involved in the investigation, including the OIC Pennuto, suggest this was the case.

4. Assistant Commissioner Michael White APM – as above and initial appointment of Southern Command to undertake the investigation.

5. Commander Travis Wurst – committed to completing his statement as mentioned during his interview on 5 December 2020.

7. Senior Sergeant Pennuto – Case OIC – further statement not required until criminal matters are dealt with in court.

A number of other (junior) police members have not assisted the criminal investigation by way of either refusing to answer questions, declining to provide a statement to investigators or have been simply told a statement is not required from them (?). It is not the responsibility of the Coronial Investigation Team to do anything other than to report this fact to the Coroner. If any member has information of relevance to the coronial investigation that is identified as critical then we will pursue that with the member direct. I expected that the criminal investigation team would do the same.

It is evident that there has been a clear lack of consistent recording of critical decisions made throughout the early stages of the investigation leading to information gaps. The criminal investigation has deviated from usual practises of recording all such detail in PROMIS and, at times, has lacked the structure prescribed under the General Order – *Major Crime, Major Investigation and Critical Incident Response*. In light of this the Coronial Investigation Team are now required to turn to the senior police executive members who were involved in the early stages of making critical decisions in order to ascertain the facts. This was documented and tabled in the 'Organisational Working Group' meeting which you attended on 28 May 2020 (Agenda Item 2).

Up until this point in time I have not been overly concerned with the delay in any statement as the Coronial Investigation Team has, quite rightly, expected that the Criminal Investigation Team would obtain the statements in a timely manner as necessary. If you are now of the firm belief that the criminal investigation is complete (with the exception of a few forensic and expert statements) then the Coronial Investigation Team will impose themselves and attend to all outstanding matters identified as being of relevance to the Coroner.

It is also expected that further statements from Police members may be required following evidence emanating from the criminal trial. Again I will be liaising with the Coroner/Deputy Coroner if this becomes the case.

In relation to the letter from the Office of the Coroner that you received (dated 29 May 2020) I can advise that on the few occasions that the Deputy Coroner has raised outstanding police statements with me (prior to me taking leave in January 2020) I have declined his offer of obtaining an order under the *Coroners Act*. I note that I was on leave overseas when you spoke with Deputy Coroner on 29 January 2020. I was not made aware of any issues pertaining to the interview with Assistant Commissioner Beer until I returned from leave in March 2020. At the direction of Acting Commissioner Murphy she then made contact with me offering to respond to 'dot point' questions but indicated she would not be making a further statement. I referred her offer to the Criminal Investigation Team as, in my view, she still had information to offer of relevance to their brief. It is apparent that offer was not taken up.

I further note that when I met with you on 16 April 2020 I raised 7 specific issues with you of potential concern. One of those issues I highlighted was '*exec officer statements*'. It was my expectation that the criminal investigation would attend to these outstanding statements but had yet to do so at that time.

When I met with the Coroner/Deputy Coroner, at their request, on Thursday 28 May 2020, there was no mention of a concern over any perceived delay in police statements. The Coroner did make mention of writing a letter to you in regard to the 'efficacy' of the investigation following on from his recent meeting with yourself and Commander Dole. During my meeting (28 May 2020) the Coroner also made mention of the possibility of appointing another suitably qualified independent investigator from interstate to undertake the coronial investigation. Although I would be personally disappointed if this were to occur, when considering the significance and nature of issues arising from this 'Death In Custody', this may be an inevitable decision for you to make in consultation with the Coroner.

Scott A. Pollock APM
Superintendent
Operation Charwell Coronial Investigation



JMC no. 3- Operation Charwell - Coronial

NAA-07

Time: 1130hrs

Date: 21 October 2020

Location: Office of the Assistant Commissioner, Nick Anticich APM

Attendees:

- Assistant Commissioner, Nick Anticich APM (Chair)
- Commander David Proctor APM
- Superintendent Scott Pollock
- Odette da Costa (Secretariat)

This and the following "2" pages is the annexure marked "NAA-07" referred to in the AFFIDAVIT of NICHOLAS ANTICICH declared/sworn/affirmed before me this 3 day of SEPTEMBER, 20 22

David Andrew Bazan - Reg. No. 29977
A Justice of the Peace for Western Australia

The chair declared the meeting open at 1135hrs.

Agenda Item 2: Minutes from previous meeting endorsed.

Agenda Item 3 - Footage: Revisited concerns of post-shooting footage, both BWV and other footage, moreso footage around how Walker was treated after the shooting.

Concerns about possible ramifications from the general public, public perception.

Statement from Dr Reade has been received. Dr Reade is the expert who has provided an opinion regarding the survivability of the wounds and actions and treatment provided by members. Something raised was the fact that DoH had left the community. Had they not, the survivability rate would have increased. Noted that the Deputy Coroner did not really want this to be looked into.

Dr Reade notes the failure of members in providing mouth-to-mouth.

Commander Proctor is of the view the footage should be viewed and a decision made as to whether the CoP needs to be briefed on it.

Noted that the level of training of PFES is sufficient. Further noted that the Deputy Coroner is not expecting that police members be trained to provide high-level first aid.

Issue raised is first aid equipment, defibrillators, did we have the right items such as bandages, was the first aid kit stocked etc... Noted that face masks were available but members elected not to use them.

Agenda Item 3 - Transcripts: To remain as an agenda item.

Agenda Item 3 - Investigation Status: Status report tabled. Noted a signed copy will be provided to the Chair.

Noted by Superintendent Pollock that when looking into issues, other issues arise that can become more of a priority.

JMC no. 3 – Operation Charwell – Coronial investigation

Commander Bacon obtaining documents from TAAC regarding decisions made not to replace the Meggitt system.

Noted firearms training has changed over time. Defence have argued that Rolfe has abided by the training he was given. Noted by Superintendent Pollock that training is an important component of the coronial. Need to review the training that Rolfe was provided.

Noted that Walker's family have asked questions around RFDS and why a plane was not sent, then finding out police arrived in a RFDS plane and not PFES Airwing.

Noted not much came out of the committal.

Noted that members did not perjure themselves. Noted that Julie Frost's statement had changed slightly.

Confirmed that the coroner has been provided verbal briefings and documents that coronial team deem relevant. Requested that records be kept of materials/communication provided to the Coroner's office. Commander Proctor is confident that the coronial team is focussing on the items the Deputy Coroner wants them to focus on.

Clarified current members on the coronial team are Senior Sergeant Lee Morgan, Senior Constable 1C Timothy Kingston, Senior Constable 1C Megan Duncan, Commander David Proctor and Superintendent Scott Pollock.

Chair queried whether we are following up with the issue at recruitment stage of verifying claims of misconduct which we didn't do with Rolfe. Commander Proctor confirmed he followed this up with Workforce Development who confirmed they don't progress applicants where they do not have a response from ADF. Commander Proctor noted a policy is required and is an action item for Workforce Development.

Superintendent Pollock has identified issues as noted in the memorandum, status report. Policies exist for example, however it is noted that if members do not follow policies, they should be able to explain why yet this is not the case.

Chair reiterated to comply with what the Deputy Coroner asks of us.

Agenda Item 4 – Senior Sergeant Barram's Statement: Barram has put himself forward as an expert. Barram has given evidence twice before as an expert.

Noted there are two statutory declarations from Barram. As a result of the enquiries into the training provided, in particular to Rolfe, it has been identified that there are discrepancies, or use of out-of-date evidence in the statutory declaration provided by Barram.

This may need to be referred to Commander Dole or DPP.

Noted that Barram has provided an opinion based on documents that are out of date and training possibly not provided to Rolfe.

Recommended this matter be referred to Commander Dole. An issue is, are we providing out-of-date training? Barram has relied on old materials and based his findings on philosophies within the training guide that do not exist in our policies.

Investigators sought a second statement from Barram. The explanation he provided does not make sense.

Noted concerns re s208E of the Criminal Code. From a coronial perspective there are concerns that we have not been training our members. From a criminal perspective there is the concern that we have stated we have provided a specific training to Rolfe and we didn't.

JMC no. 3 – Operation Charwell – Coronial investigation

There is a clear disconnect between policies and training. Noted Commander College is aware of this issue.

Clarified that Barram has stated all police have been trained in a component that was removed from the syllabus in 2014.

Noted Defence have raised in their written submission that the opinions of Barram and Alpert are inadmissible.

Agenda Item 4 – Dr Reade: Discussed earlier in the meeting.

Other business: Superintendent Pollock on leave 4-11 November 2020

Action Items:

Action Item 1	Task: First draft to be provided to Commander Proctor by 4 Nov 2020	Owner: Supt. Pollock
Action Item 2	Task: Refer matter to Crime re Barram via AC Anticich	Owner: Cmdr. Proctor
Action Item 3	Task: Discuss with Deputy Coroner and clarify if he would like brief report now and open to further enquiries or after the trial	Owner: Cmdr. Proctor

Meeting close: 1225hrs

Next Meeting

TBA.

This and the following "3" pages is the annexure marked
"NA-08" referred to in the Affidavit 74A ANTICICH, Nick - affidavit 03.09.22 -08
of NICHOLAS ANTICICH
declared/sworn/affirmed before me this 3
day of September 20. 22

David Andrew Bazan Reg. No. 29977
A Justice of the Peace for Western Australia



To: Commissioned Officer In Charge, Operation Charwell Coronial TRM File: 04:P20:783
TRM Doc: 04:D20:68796

From: Superintendent, Charwell Coronial Investigation Date: 20 October 2020

Re: Operation Charwell – Statutory Declaration evidence provided by Detective Senior Sergeant Andrew Barram

Background

1 The Operation Charwell Coronial Investigation team have been reviewed evidence provided by police witnesses to ensure training provided by the NTPFES College was current and in line with nationally and locally agreed policy.

Current situation

2 It appears references and evidence provided by a key witness, Detective Senior Sergeant Andrew Barram, in support of the prosecution case in Operation Charwell is, in part, either out-of-date or incorrect. Barram has declared that he is an 'expert witness' in 'Police Use of Force' in the matter involving the prosecution of Constable Zachary Rolfe. Barram has previously been requested by Operation Charwell criminal investigators to clarify information provided in his original statement 'Review of Tactics and Force used in this incident'. In attempting to do so he has provided a further statutory declaration titled 'DIAMO Clarification'. In addition to other referenced materials, the information he has provided in the statement 'DIAMO Clarification' has raised doubts about the veracity of his self proclaimed status as an expert.

3 A review of Barram's statement 'Review of Tactics and Force used in this incident' has identified that he has relied upon certain policies that are well out-of-date. He has both referenced these materials and annexed them to his statement. These materials were, in part, well out of date even before Barram commenced his tenure at the Operational Safety Tactics Unit, NTPFES College in October 2012. During his tenure with the OST Unit Senior Sergeant Barram was responsible for ensuring policies and procedures, including training tactics, were kept contemporary. This seemingly did not occur.

4 An issue of obvious concern is Barram's reference to a police use of force training acronym 'DIAMO + P'. Barram has relied heavily on this acronym in determining that Constable Zachary Rolfe had not adhered to elements when considering whether the use of lethal force is justified. Barram has dedicated 5 pages of his statutory declaration 'Review of Tactics and Force used in this incident' (pages 34 - 38, paragraphs 130 - 159) in determining that Rolfe did not adhere to the 'DIAMO + P' training he received when undertaking recruit training.

Memorandum: Operation Charwell Coronial – Statement of Senior Sergeant Andrew Barram

5 It was noted that the acronym 'DIAMO + P' is referenced in 'Annexure C' - *Facilitator Guide - Operational Safety - Session 2 - Incident Management* together with Barram's *Review of Tactics and Force used in this incident* statutory declaration. The facilitator guide to *Operational Safety - Session 2 - Incident Management* provides a 'Location and Version History' (Page 3) indicating that 'DIAMO' was removed from this facilitator guide by Sergeant Mick Hansen (formally of the NTPFES College now dismissed) during a module review on 26 February 2014.

6 When this fact was raised with Barram by Operation Charwell criminal investigators Barram provided a further statutory declaration suggesting that only the acronym 'DIAMO + P' was removed from the training content and that the elements of 'DIAMO + P' were still contained in the facilitator guide. In this respect Barram is correct. There is still a reference to 'DIAMO + P', minus the acronym, contained within the facilitator guide.

7 Further research now indicates that 'DIAMO + P' was a training reference licensed to 'Verbal Judo'. 'Verbal Judo' ceased being used by the NTPF as a defence training mechanism in 2007. At that time the NTPF provided a letter of assurance to the company licensed to deliver 'Verbal Judo' that all training references, including 'DIAMO + P' would be removed from training in respect to copyright. It is not known why it took until 2014 for this to occur however it is apparent that not all 'Verbal Judo' training materials were removed as promised. Barram should have been aware of this in his capacity as the Senior Sergeant in charge of OST training.

8 It is submitted that the Statutory Declarations submitted by Barram are, in part, untrue. It may be the case that he is ignorant regarding the history of 'DIAMO + P' training but it is most unlikely that he would have been unaware of the change to 'DIAMO + P' education initiated by Sergeant Hansen in 2014 at a time when he was in charge of the OST Unit. To submit in a statutory declaration that only the acronym was removed from the OST training guide in 2014, is illogical, as is his comment in his *Review of Tactics and Force used in this incident* statutory declaration suggesting all police receive training in 'DIAMO + P' (as it was only taught to those police who undertook the 'Verbal Judo' training).

9 From my perspective as the Operation Charwell Coronial Senior Investigator I am concerned regarding how it is possible that facilitators at the NTPFES College are delivering outdated training materials to recruits. The Use of Force policies of this organisation seemingly do not align to the training provided to recruits and police undertaking refresher use of force training. It is highly probable that the critique provided by Barram in his statement regarding Constable Rolfe's failure to adhere to the 'DIAMO + P' principle was due to the fact that Rolfe never received such specific training¹.

¹ The NTPFES College is unable to state who facilitated the 'Incident Management' training to Squad 129 in 2016.

Memorandum: Operation Charwell Coronial – Statement of Senior Sergeant Andrew Barram

10
Further, Barram has failed to reference in his statement any detail regarding the legislative powers that police rely upon when using force in consideration of S208E, Criminal Code Act 1983. This is hardly surprising when, prior to the death of Walker, very few police knew of the existence of this important piece of legislation. While that is a separate matter of concern and relevant to the coronial investigation it is also a critical component of the key 'Use of Force' principles as agreed by ANZPAA and our organisation in ensuring *'individual police are accountable and responsible for their use of force and must be able to justify their actions at law'*. Having now made this apparent to the OST Unit (since the death of Walker) there has been an urgent update to training materials, including S208E Criminal Code Act 1983, on offer to recruits and those undertaking OST requalification. Unfortunately this has come too late for the recruits on Squad 129, including Constable Zachary Rolfe, who trained in 2016.

Recommendation

1. That you refer all issues of concern regarding the Statutory Declaration submitted by Detective Senior Sergeant Andrew Barram to the Operation Charwell investigation team.
2. That the final Report to Coroner recommend that any NTPF OST designated 'expert' in future be confined to providing evidence on Operation Skills and Tactics Training only.

[REDACTED]
Scott A. Follock APM

Superintendent

20 October 2020

Memorandum: Operation Charwell Coronial – Statement of Senior Sergeant Andrew Barram



Name: David Proctor APM

Title: Commander, Commissioned Officer In Charge, Operation Charwell Coronial

Date: 27/10/2020.

Noted / ~~Please Discuss~~

Commander Crime.

This memo was discussed with AC Anticich at the Coronial JMC for op charwell.

The recommendation from JMC was for the memo to be referred to your officers to enable an assessment of the memo to be undertaken, and to determine whether the reference to outboard material in the statements of S/Sgt Barram has any impact on evidence given to date or in future proceedings, and if this is the case for the DPP to be advised.





Memorandum

To: Assistant Commissioner, Crime, Intelligence & Capability TRM File: 04:F20:783

Through: Commander, Crime Command TRM Doc:

From: Superintendent, Crime Division Date: 16 November 2020

Re: Operation Charwell – Coronial Investigator’s challenge to the evidence of Detective Senior Sergeant Andrew Barram

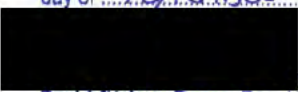
This report is in response to the memorandum from Superintendent Scott Pollock dated 20 October 2020, TRIM reference 04:D20:68796.

In his report Supt Pollock makes a number of assertions, which can be reduced to:

- Supt Pollock challenged DSSgt Barram’s status as an expert witness (para 2)
- That operational safety training (OST) policies were ‘out of date’ (para 3)
- DSSgt Barram is criticised for not keeping OST policies and procures contemporary (para 3)
- DSSgt Barram’s statements were untrue, he is ignorant to some matters, and the removal of the ‘DIAMO+P’ acronym is illogical (para 8)
- Concern the college has delivered outdated training to recruits; the policy is not aligned to training; and suggestion that Constable Rolfe never received specific training (para 9)
- Section 208E of the *Criminal Code* is raised as a defence (para 10)
- “Unfortunately (the defence of section 208E) has come too late for ... Constable Zachary Rolfe” (para 10)

The contents of Supt Pollock’s report were shared with the Operation Charwell criminal investigation team, and the general themes were discussed with the prosecution, Mr Philip Stickland SC and Collette Dixon (DPP) on 13 November 2020.

This and the following "2" pages is the annexure marked
 "N/A-09" referred to in the AFFIDAVIT
 of NICHOLAS ANTICICH
 declared/sworn/affirmed before me this 3
 day of SEPTEMBER 20 22



David Andrew Bazen Reg. No. 29977
 A Justice of the Peace for Western Australia

Memorandum: Operation Charwell – Coronial Investigator’s challenge to the evidence of Detective Senior Sergeant Andrew Barram

Police investigators identified that the bulk of assertions by Supt Pollock were not specific and without reference to facts. Specifically:

- DSSgt Barram’s status as an expert witness is subject to acceptance by the court and it is not something the prosecution make a ruling on, but rather for legal argument to determine.
- Referring to policy being ‘out of date’ without reference to dates promulgated, reviewed and whether still relevant makes no sense. A policy that is many years old may still be current if all aspects are still relevant and in use. Furthermore these comments lack specificity or references.
- Comments attacking DSSgt Barram for not keeping OST policies and procedures contemporary lack particularisation, have no references and have no bearing on the criminal prosecution.
- Investigators are satisfied the evidence provided by DSSgt Barram addresses the matters necessary in regards to OST policy and training. Comments suggesting a chain of events as illogical are without reference or specificity and make little sense in the given context. The concerns raised regarding the use of an acronym were clarified in a follow up statement from DSSgt Barram.
- Again the matters identified lack reference or specificity. Investigators are satisfied the evidence shows that training was provided in accordance with policies that if followed by the defendant would not have resulted in the charges so laid. The suggestion that Constable Rolfe never received specific training is without basis in fact.
- Commentary regarding section 208E of the *Criminal Code* is peculiar as it is a defence rightly considered by the courts: not a means to prevent investigators laying a charge. The matter has subsequently traversed DPP and senior counsel review, and committal, without this section reducing the charges under consideration. The further commentary about introducing it in training is also curious in that section 208E does not impact upon an officer’s decision to use a level of force lawfully (authorisation, justification or excuse) and in accordance with training.


The prosecution agreed with the assessment of police investigators and advised that defence counsel are expected to vigorously challenge DSSgt Barram’s evidence, and all expert witness testimony. The prosecution agreed that the position of the coronial investigation providing commentary on the evidence of the criminal investigation was highly unusual. The prosecution advised they would be very concerned if DSSgt Barram had his evidence directly challenged outside the court as this could be considered attempting to interfere with his evidence. The prosecution appreciated being provided the advice.

The remaining matter is then Supt Pollock’s comments that, “unfortunately (the defence of section 208E) has come too late for ... Constable Zachary Rolfe”. This suggests some emotional investment in the outcome. Fortunate or unfortunate is of no consideration in an impartial investigation. A legal defence coming too late is nonsensical and suggests that the preferred outcome is that Cst Rolfe has a defence available to him. As the parting comments in a report seemingly directed at criticising parts of the criminal process currently in train, this raises some serious concerns about the independence of the coronial investigation and its role in examining the evolving criminal proceeding.

Recommendations:

Memorandum: Operation Charwell – Coronial Investigator’s challenge to the evidence of Detective Senior Sergeant Andrew Barram

1. Dismiss both recommendations contained in the report of Supt Pollock.
2. Provide greater independent oversight of the coronial investigation to ensure its focus remains on examining the circumstances leading up to the death, the cause of death and whether the death was preventable. While a quality, independent criminal investigation and prosecution is underway, those questions concerning the adequacy or otherwise of the criminal investigation should properly come after the conclusion of the criminal matter, not during - which may otherwise interfere with the prosecution.


Peter Kennon
Detective Superintendent

Martin Dole
Commander
Date:

Supported / Not Supported

Noted / Please Discuss


Nick Anticich
Assistant Commissioner
Date:



Supported / Not Supported

Noted / Please Discuss

The recommendations above both 1. & 2. are supported.
Commander Proctor please direct Coronial Investigators
that matters concerning the adequacy or otherwise of the
criminal investigation are to wait until the conclusion
of the criminal trial.



NAA-10

JMC no. 4- Operation Charwell - Coronial Investigation

Time: 1300hrs

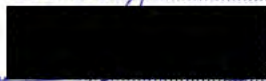
Date: 27 November 2020

Location: Office of the Assistant Commissioner, Nick Anticich APM

Attendees:

- Assistant Commissioner, Nick Anticich APM (Chair) - NA
- Commander David Proctor APM - DP
- Superintendent Scott Pollock - SP
- Odette da Costa (Secretariat) - ODC

This and the following "3" pages is the annexure marked
 "NAA-10" referred to in the AFFIDAVIT
 of NICHOLAS ANTICICH
 declared/sworn/affirmed before me this 3
 day of SEPTEMBER, 2022


 David Andrew Bazen Reg. No. 29977
 A Justice of the Peace for Western Australia

The chair declared the meeting open at 1302hrs.

The chair commenced the meeting by asking for an update on the status of the coroner's report. DP advised that he is currently reviewing SP's draft report. Gaps identified, being interviews that still need to be carried out/ completed with involved members and the family of the deceased, still need to clarify with the Coroner as to whether certain members still need to be re-interviewed, noted DP meeting with Deputy Coroner in the afternoon of 27 November 2020.

NA asked if there is an anticipated date of when the report will be finalised. DP advised early to mid-January 2021.

NA noted he has spoken with Dr Freckelton and hopes to have him in Darwin second week of February 2021.

NA noted he has commended DP's report to both Deputies, noting the complex issues have been mapped out very well.

NA briefly spoke to institutional racism, where leave was provided to the family to submit their application post the trial. DP requested a copy of the application as part of their coronial investigation. DP to follow up with Sandy Lau for a copy.

Clarified staffing status, noting Lee Morgan, Timothy Kingston and Megan Duncan still on board. SP noted PFES College have not been assisting with materials required, which may be due to competing priorities. Noted by SP that the information is required to complete report. SP clarified for NA that 'brief' refers to all the documents/ information that has been referenced which supports the coroner's report. The brief will also be provided to the coroner. In summary the brief is everything that is referenced in the report.

NA noted that it is now 12 months on and would like to narrow down when the brief and report will be completed.

NA noted he has examined the memorandum (04:D20:68796 refers). A/Commander Crime, Peter Kennon met with Strickland and DPP and provided a copy to them. NA advised that the investigation of the

investigation is to be suspended as a precaution to not jeopardise the criminal investigation. NA noted he will advise the Coroner of this decision. If the Coroner directs NA otherwise, DPP will be made aware to resolve.

NA noted the Coroner can have the information after the criminal prosecution. NA noted the priority now is the criminal prosecution.

NA noted the DPP's opinion is that the evidence is being tested in SP's memorandum. DP disagreed, noting that the validity of the expert witness is not being questioned, but rather the information provided by the expert witness is outdated and not correct. DP further noted that the coronial review is fact checking, reviewing the investigation and not making judgement.

NA reiterated that he is not saying the coronial investigation is not to continue, but it is suspended. DP questioned whether this means all evidence will not be provided to the court but rather information that fits the prosecution.

NA noted that investigators do not agree with SP's report and recommendations.

DP noted that NA is putting the organisation at risk. NA noted he accepts this risk. DP noted he (DP) does not.

SP explained that he was putting in context that the training material he was asked to review by the Coroner identified that the information provided by the expert witness was not factually correct.

NA reiterated that the investigation is to stop. SP noted what needs to stop is training members with outdated material. NA agreed with this comment if it is an ongoing challenge.

DP noted that NA he has concerns that if the investigation is suspended, they will be exposed if there are items in the prosecution brief that are not correct or identified as being incorrect at trial, or subsequent coronial, that NA's direction to suspend investigations prevents them from being identified prior to the criminal proceedings going ahead. DP noted he will not take responsibility for this.

NA noted that he will formally write to DP with his direction to suspend investigations and also to SP with questions regarding the report. SP advised he will not submit his report if he cannot complete it. SP noted he cannot factually report if he cannot access facts or include certain facts that are evident to him. SP provided the example that there is a textile report re EBERL and his shirt identifying that he was stabbed. The report has not been provided by anyone. The physical evidence supports that EBERL was stabbed by Walker. SP advised he cannot just ignore this piece of evidence.

DP clarified they are not here to question the investigation or investigators. Their role is to find the fact to substantiate the report for the coroner.

NA noted that the coronial goes to the cause of death. DP clarified that the Coroner asked the coronial team to look at elements of the investigation to ensure Rolfe was not treated differently. DP clarified that the team is doing what NA directed them to do in the dot points from the initial report SP completed following the meeting with the Coroner, noting 'gold standard' investigation.

NA reiterated he is not saying it should not be done, but rather should not be done now.

NA noted he is in a challenging position now when the DCOP is asking why the Coroner is testing the evidence. DP noted he feels NA is partly conflicted because he went to the DPP with Commander Dole and is part of the decision-making process. This direction could be seen as ensuring the position the agency took is correct.

JMC no. 4 – Operation Charwell – Coronial investigation

NA feels we have gone well beyond determining the cause of death for the Coroner and pre-empting a criminal trial puts us in a precarious and difficult position. DP disagreed that the criminal trial is being pre-empted.

Noted report in response to SP's memorandum is authored by A/Commander Kennon. SP queried whether A/Commander Kennon approached the OSTT unit to verify if the information is correct.

NA reiterated he feels we are in dangerous ground testing the evidence that is before the court.

DP queried, if he checks the file and identifies information that is not correct, would NA expect him to submit it regardless, or expect DP to advise of the incorrect information.

SP feels A/Commander Kennon has not fact checked in writing his response, otherwise they would have received the same information.

NA noted it is for the court to decide as to the reputation of the organisation.

NA advised he wants the final report completed. SP noted it will not be final without all the information.

NA noted he is concerned the prosecution of the case is being undermined. DP disagreed.

NA queried the comment from SP in his memorandum about 208E and that it is not taught to investigators. SP clarified that Andrew Barram has not referenced 208E at all which was picked up in 2014 by Marcus Tilbrook who identified that we were not instructing our members correctly with our provisions in the use of force which links to ANZPAA where as an agency we are responsible for teaching our members all in relation to use of force. Noted by SP we have been teaching outdated material.

SP clarified that 208E has not been taught to members which is a defence authorisation provision for police, noting members do not know about this. DP added that Andrew Barram has made broad statements about X, Y and Z being taught which is not the case.

Clarified that SP's comment in his memorandum that "*unfortunately this has come too late for the recruits on squad 129 including Zachary Rolfe...*" is that it is unfortunate that as an agency we are responsible for training our recruits the law that exists at the time, not what previously existed.

NA clarified that 208E conditions Rolfe's actions that he should have considered these factors.

DP noted he is offended that there is a perception/ concept that the coronial investigation team are trying to turn over the criminal investigation. Furthermore, DP finds it more offensive that the information should have been fact-checked by the investigators before getting to the prosecution team.

SP noted that the Sacha Green inquest indicates what the coroner will be looking at.

NA advised he will provide clear written directions that matters before the criminal proceedings to be suspended until NA advises the coroner. NA reiterated he requires the report to be finalised.

SP reiterated he cannot finalise the report as there are still witnesses to be spoken to.

Other business:

Action Items:

Action Item 1	Task: Update visio chart to include AHRC	Owner: Odette da Costa
----------------------	--	------------------------



Action Item 2	Task:	Owner:
Action Item 3	Task:	Owner:

Meeting close: 1407hrs

Next Meeting

TBA.





Level 6 NAB Building
71 Smith Street
Darwin NT 0800

PO Box 39764
Winnellie NT0821

E Nick.Anticich@pfes.nt.gov.au

T 08 8901 0268

Our reference
TRMNo. 04:F20:2263

Mr Kelvin Currie
Deputy Coroner
Office of the Coroner
GPO Box 401
Darwin NT 0801

Via email: kelvin.currie@nt.gov.au

Dear Deputy Coroner

This and the following "....." pages is the annexure marked
"AA-1" referred to in the ...AFFIDAVIT.....
of ...NICHOLAS ANTICICH.....
declared/sworn/affirmed before me this 3
day of SEPTEMBER 20..... 22.....

David Andrew Bazen Reg. No. 29977
A Justice of the Peace for Western Australia

Re: Operation Charwell - Coronial Investigation

Please find attached two reports – Attachment A, Memorandum from Superintendent Scott Pollock and Attachment B, Memorandum from Detective Superintendent Peter Kennon.

The first memorandum from Detective Superintendent Pollock who is leading the coronial investigation, expressed an opinion regarding the statutory declaration of Detective Senior Sergeant Andrew Barram, who is a witness in the criminal prosecution of Constable Zachary Rolfe, charged with the murder of Kumanjayi Walker. That death is the subject of a coronial investigation.

The second memorandum by Detective Superintendent Kennon is in response to the issues raised in Detective Superintendent Pollock’s memorandum.

As a result of considering both memorandums, my initial response was to support both recommendations made by Detective Superintendent Kennon.

On Friday, 27 October 2020 I convened a Joint Management Committee (JMC) meeting with Commander Proctor and Detective Superintendent Pollock. At that meeting I gave a direction that any aspect of the coronial investigation touching on evidence before the court on the criminal prosecution, was to be suspended.

I have subsequently reviewed that direction and now provide the following decisions:

1. The suspension of investigations relevant to the criminal investigation is withdrawn.
2. In regards to the memorandum from Superintendent Pollock, recommendation 1 has been actioned and recommendation 2 will be considered in the Coroner's report.
3. In relation to the memorandum by Detective Superintendent Kennon, and contrary to my previous decision, the recommendations from Superintendent Pollock are not dismissed. Furthermore, in relation to recommendation 2, the coronial investigation team is to work to the direction of the Coroner as deemed appropriate.



Any matters of concern in relation to the criminal investigation uncovered by the coronial investigations will be referred to the Prosecution as a matter of priority for their consideration.

I raise these issues and advise you formally to provide absolute transparency on my actions and the course of the coronial investigation

Yours sincerely



Nick Anticich APM
Assistant Commissioner

30 November 2020

