

CORONIAL INVESTIGATION REPORT

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



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Northern Territory Police



memo

PROMIS: 9129856

To: CORONIAL INVESTIGATION UNIT
From: SUPERINTENDENT, OPERATION CHARWELL
CORONIAL INVESTIGATION
Subject: ██████████ WALKER – DEATH IN
CUSTODY - YUENDUMU – 9 NOVEMBER 2019

TRM File:

TRM Doc:

Date: January 2021

1. Preliminary Information

1.1. Reported When and by Whom:

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

1.2. Deceased's Details:

Name: ██████████ Walker

Address: House 577, Yuendumu

D.O.B: 13/10/2000

P.O.B: Alice Springs

Occupation: Unemployed

Employer: N/A

1.3. Date and Time of Death:

2036 Hours, 9 November 2019

1.4. Location of Death:

Yuendumu Police Station

1.5. Medical Assistance at The Scene/Death:

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

1.6. Identification:

The deceased was formally identified via fingerprint examination.

1.7. Certification:

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

1.8. Next Of Kin:

Rekeisha Robertson (Wife)

1.9. Leanne Oldfield – Adoptive mother

Selena Lee Lane – Mother (Deceased)

Frank Walker - Father – (Deceased)

1.10. Medical Practitioner/Hospital:

Alice Springs Hospital/Yuendumu Health Clinic

1.11. Autopsy:

Conducted by Forensic Pathologist, Dr Marianne Tiemensma

1.12. P.C.O.D:

1a) Gunshot injury to chest and abdomen

1.13. Toxicology:

Specimens sent for analysis – Yes

If yes – results for

1.14. Alcohol:

Refer toxicology report (Folio -

1.15. Drugs:

The deceased has traces of cannabis in his system.

Refer toxicology report (Folio -

1.16. Medications Deceased Was Taking:

Nil

1.17. Witnesses:

Civilian – Folio

Police – Folio

Medical - Folio

1.18. Photographs:

Scene photographs and video recording of scene – Senior Constable Ian Spilsbury

Post Mortem photographs -

2. Summary of Medical History: ██████████ Walker

1. 13/10/2000 - ██████████ WALKER (AW) was born on 13 October 2000, at Alice Springs Hospital. At birth, AW was assessed as being a "morphologically normal male infant. Discharged into care of Selena LANE on 17/10/2000 -

2. 18/10/2000 – Selena LANE presented to Haasts Bluff Clinic with AW reporting breast feeding issues. 29/10/2000 – medi-vaced to Alice Springs Hospital. Diagnosis with "failure to Thrive". LANE was assisted with bottle feeding education. Discharged into Selena LANE's care on 20/11/2000.

3. 4/3/2001 – AW was admitted to Alice Springs Hospital in care of Selena LANE. Diagnosis – Right hemiotomy requiring corrective surgery. Discharged into care of Selena LANE on 19/3/2001.

4. 1/4/2001, AW was taken to the Alice Springs Hospital Emergency Department by Leanne OLDFIELD for a temperature and cough. AW was not admitted into the hospital and released back into the custody of Leanne OLDFIELD.

5. 12/5/2001, AW (7 months old) was admitted to Alice Springs Hospital via Kintore Health Clinic with his maternal Grandmother Anne DIXON @ LANE. A referral letter from Pintubi Homelands Health Services (Kintore Clinic) reported AW presented to the clinic with diarrhoea and vomiting from 10 May 2001. Many presentations at Kintore with diarrhoea, vomiting and being unwell. Diagnosis: Gastroenteritis (Rotavirus), Pneumonia and deficiency anaemia. Discharged on 6/6/2001 in to care of Anne LANE and Joseph LANE (Selena LANE's parents).

6. 17/6/2001, AW (8 months old) was medi--vaced to Alice Springs Hospital via Haasts Bluff with Anne LANE (Grandmother). Diagnosis: salmonella and pneumonia. Social issues (not meeting standard millstones sitting up / eating solid foods etc. Discharged on 29/6/2001 into the care of Leanne OLDFIELD at Warlpiri Camp, Alice Springs.

7. 6/9/2001, AW admitted to Alice Springs Hospital. Diagnosis: pneumonia, conjunctivitis, excoriated groin and buttocks (nappy rash) and meningitis. Discharged into the care of Leanne OLDFIELD of House 4 Warpiri Camp on 18/9/2001.

8. 17/10/2001 – AW admitted to Alice Springs Hospital' Diagnosis: pneumonia, conjunctivitis, meningitis and CSOM (Infection of ear drum). Discharged into care of Leanne OLDFIELD on 21/10/2001

9. 25/10/2001 - Tahnia EDWARDS (Registered Nurse) from Congress Medical Centre made contact with TF Case Worker HASSALL requesting assistance in locating Leanne OLDFIELD and keep her advised of the child's whereabouts. AW flagged as "At Risk" and his weight and health required to be monitored.

10. 25/11/2001 - AW (13 months old) medevaced to Alice Springs Hospital from Ti Tree, with grandmother, Margaret BROWN. Diagnosis: lower respiratory tract infection, giardia, left CSOM (ear infection), chronic FTT and social issues - referred to FACS. Discharged on 30/11/2001 into the care of Margaret BROWN.

11. 12/2/2002 - AW (17 months old), admitted into Alice Springs hospital from Ti Tree. Diagnosis: Gastroenteritis (Giardia). Discharged on 17/2/2002 in care of Margaret BROWN.

12. 11/7/2002 – AW presented with Leanne OLDFIELD at Alice Springs Emergency Department. High temperature, mucky eyes and diarrhoea. Child not admitted.

13. 26/9/2002 - AW (23 months old) medi-vaced to Alice Springs Hospital via Ti Tree with Leanne OLDFIELD. Diagnosis: upper respiratory infection, gastroenteritis and weight loss (Failure to Thrive). Discharged into care of Leanne OLDFIELD on 9/10/2002.

14. 5/11/2003 - Katherine Emergency department. AW presented with mum (Leanne OLDFIELD). Multiple lacerations on right and left leg. History provided by mum, apparently caused by glass from broken window during attempted break-in.

15. 24/1/2006, AW (5 ½ years old) admitted to Alice Springs Hospital in the care of Margaret BROWN. Diagnosis: pneumonia. Discharged on 26/1/2006.

16. Wurli Wurlingjang Health Service – Katherine
24/9/2007 – AW brought in by carer – issues with hearing – Right TM – Healing perforation visible.

16.1. 25/10/2007 – AW failed to attend for follow-up (hearing test)

16.2. 1/11/2007 – AW failed to attend for follow-up (hearing test)

16.3. 2/11/2007 – AW failed to attend for follow-up (hearing test)

16.4. 9/11/2007 – AW failed to attend for follow-up (hearing test)

17. Wurli Wurlingjang Health Service – Katherine
15/1/2008 – AW brought in by mother (Leanne OLDFIELD) for NT Intervention Child Health Check.

16/1/2008 – AW at clinic for: 1. Dry preformation right ear and concerns re hearing
2. Dental referral

17.1. 15/2/2008 – AW failed to attend for follow-up appointment

17.2. 21/2/2008 - AW failed to attend for follow-up appointment

17.3. 31/3/2008 - AW failed to attend for follow-up appointment

18. Wurli Wurlingjang Health Service – Katherine
1/5/2008 – AW presented with mum for a toothache.

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

33. Alice Springs [REDACTED]
17/7/2018 – AW treated for wrist pain post [REDACTED]
[REDACTED]

34. On 21/7/201 [REDACTED], AW was admitted to AS Hospital for a laceration to left eyebrow after hitting his head on the concrete floor, injury self-inflicted when he was refused the use of a phone. The wound was cleaned and sutured. He was released on same day.

3. Background: [REDACTED] Walker

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

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

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

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

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

He commenced a domestic [REDACTED] relationship with Rekeshia ROBERTSON around February 2016. Both lived Yuendumu during the period they were together.

Commented [PD1]: Follow up on this

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

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

Territory Families have an extensive Child Protection history for AW, receiving notifications of neglect and inadequate care/supervision by his carer/s over the course of his life.

4. Background – Constable Zachary Rolfe

Zachary Brian ROLFE (ROLFE) was born at in Canberra on [REDACTED] 1991. Rolfe lived in Canberra as a child and attended Canberra Grammar School between 2004 and 2009. On completing his schooling Rolfe was employed at his father automotive business before he joined the Australian Defence Force (ADF) on 26 October 2010.

Whilst in the ADF, Rolfe faced disciplinary action for a stealing offence where he subsequently was issued with a show cause notice. Rolfe was not dismissed from the ADF and was subsequently deployed to Afghanistan for the period 9 July 2014 and 17 January 2015. It is not believed that Rolfe was engaged in combat during this period. Rolfe resigned from fulltime ADF service on 4 May, 2015.

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

On 1 February 2016, Rolfe applied to join the Queensland Police Service (QPS). The following day he applied to join the Northern Territory Police Force (NTPF). On 7 March 2016, Rolfe received an email from the QPS that his application would not progress any further and he had been excluded from applying for the QPS for 10 years due to his failure to disclose his involvement in a violent incident.

Rolfe progressed through the NTPF recruitment process and commenced training with the NTPF on 30 May 2016. Upon graduating from his recruit training on Rolfe was posted to Alice Springs Police Station on 8 December 2016¹.

Between 8 and 19 May 2017 Rolfe completed training to become part of the Alice Springs 'Immediate Response Team' (IRT). Rolfe was well regarded by his supervisors for having a high work ethic.

Rolfe successfully completed his Tactical Response Group assessment between July 2018 (2 day assessment) and August 2018 (5 day assessment).

On 9 November 2019 Rolfe was rostered to commence duty at 1500hrs however he was called out earlier in the day and subsequently travelled to Yuendumu with three other IRT members. At 1922hrs on 9 November Rolfe discharged his firearm, killing ██████████ Walker. On 13 November 2019 he was charged with the 'murder' of ██████████ Walker and is currently on bail awaiting trial. He has been suspended from duty on full pay.

9 February 2016 – Zachary Rolfe applies to join the Northern Territory Police (also Queensland Police, Victorian Police and Western Australia Police).

30 May 2016 – Constable Zachary Rolfe commences service with the Northern Territory Police

7 December 2016 – Constable Zachary Rolfe graduates as the 'Dux' of his training course

8 December 2016 - Constable Rolfe is transferred to Alice Springs as a Probationary Constable.

8 May 2017 – Constable Rolfe undertakes initial Immediate Response Team training

16 – 23 August 2017 - Constable Rolfe undertakes Tactical Response Team selection training

15 March 2018 – Constable Rolfe completes Australian Army Special Forces entry test

1 August 2018 – Constable Rolfe completes his probation and is confirmed as a Constable of the Northern Territory Police²

¹ Rolfe graduated from the Police, Fire and Emergency Services College as 'Dux' of Recruit Squad 126 ?"?"

² Northern Territory Police Gazette No.18 – dated 6 September 2018

Surrounding

5. Timeline of Events ~~Leading up to~~ the Death of Walker

Does this go in an annexure.

11 March 2019 – █████ Walker commits unlawful entry at Yuendumu Store (PROMIS 8907172 refers)

18 March 2019 – Walker arrested at Yuendumu for unlawful entry and breach of suspended sentence. Imprisoned for 16 months to serve 8 months. Sentence to commence from 22 February 2019.

22 June 2019 – Judge Birch confirms suspended sentence for Walker to commence 21 October 2019 subject to conditions - attend CAAAPU and electronic monitoring.

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

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

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

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

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

9 November 2019

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

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

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

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

1400 Hours – Supt Nobbs calls Furniss and advises IRT deployment approved. IRT member to take 'full kit' to Yuendumu but to wear 'blues' (police uniform). S/Sgt Furniss tasks call-out to A/Sgt Shane McCormack. McCormack calls trained IRT members, Constables HAWKINGS, EBERL, ROLFE and KIRSTENFELDT on duty.

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

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

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

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

1730 Hours – DOU member Donaldson arrives in Yuendumu.

1830 Hours – IRT members Rolfe/Kirstenfeldt arrive in Yuendumu.

1850 Hours – IRT members Hawkings/Eberl arrive in Yuendumu

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

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

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

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

1920 Hours – Eberl enters House 511 followed by Rolfe. Walker located in living room and provides members with false name (Vernon Dickson³).

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

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

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

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

1930 Hours –Yuelemu Health staff notified of shooting.

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

2014 Hours – CPR commenced on Walker

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

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

³ Vernon Dickson, dob [REDACTED] 2001, is an actual resident of Yuendumu/Alice Springs and, similar to Walker, is recorded in PROMIS (ID 1360392) as cared for by Leanne Oldfield.

2036 Hours – IRT members declare Walker deceased

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

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

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

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

2109 Hours – Yuelumu Health staff arrive and confirm Walker as deceased

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

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

2357 Hours – Constable Rolfe returns via Polair to Alice Springs. NISK authority obtained. Rolfe conveyed to Alice Springs Hospital. No statement obtained from Rolfe.

Sunday 10 November 2019

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

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

0117 Hours – TRG members arrive at Yuendumu from Darwin

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

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

0724 Hours – Crime Scene established at House 511

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

0808 Hours – NAAJA notified of death by Supt Vicary

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

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

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

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

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

Monday 11 November 2019

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

Tuesday 12 November 2019

0848 – IMC (No.2)

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

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

1700 Hours – Rolfe travels to Darwin accompanied by his mother

Wednesday 13 November 2019

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

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

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

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

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

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

6. Circumstances Surrounding the Death of Walker

6.1. Arrest for Property Offences at Yuendumu – March 2019

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

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

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

6.2. Walker Absconds from CAAPU

At around 0040 hours on 29 October 2019 Walker removed his electronic monitor and left CAAPU without authority. Police were notified by Community Corrections (PROMIS 9118468 refers). Later on the same day Alice Springs Police attended a previous address of Walker at 27/8 Erumba Street, Alice Springs before attending Warlpiri Camp making further attempts to locate Walker without success. Sergeant Michael Hickey added an 'Alert' to the PROMIS identity of Walker as an 'Active Target' for Breach of Suspended Sentence.

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

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

6.3. Attempt to Arrest Walker – Yuendumu 6 November 2019

On Wednesday 6 November 2019 Yuendumu Police received information from a community source that Walker had returned to the community and could be located at House 577. Yuendumu Police were aware that Walker had an outstanding warrant for breaching his suspended sentence. Two Police Officers, Senior Constable Chris Hand and Senior Constable Lanyon Smith, attended House 577 and located Walker inside a bedroom together with his wife, Rekeisha Robertson. Upon being told that he was arrested Walker responded by arming himself with a tomahawk and then threatened both police members with the weapon. Walker then ran from the house before he absconded into nearby bushland. This incident was captured on the Body Worn Video (BWV) cameras worn by both Smith and Hand.

The Officer In Charge (OIC) of Yuendumu, Sergeant Julie Frost, viewed the footage and reported the assault on her members to her Divisional Superintendent, Jody Nobbs. In acknowledging the seriousness of the assault Nobbs then instructed Frost to notify the Watch Commander in Alice Springs in order to have the Watch Commander broadcast the incident (Assault -Aggravated) to all senior police management via a WebEOC entry. Despite considering the matter to constitute a 'critical incident' Superintendent Nobbs left the follow up arrest of Walker with the Yuendumu Police members. A PROMIS Case 9126603 was entered into the Police database relating to the incident.

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

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

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

The family advised that Walker was due to attend a funeral in Yuendumu on Friday and that if he was permitted to attend the funeral then family would endeavour to bring him into the (Yuendumu) Police Station following the funeral. Sergeant Frost agreed to this request but warned the family that if Walker did not surrender himself then additional forces from Alice Springs would be called in to assist in apprehending Walker, including the Police Dog Unit⁴.

Later on the evening of Thursday 7 November 2019, Alice Springs Police Sergeant, Evan Kelly, took his patrol group to the Warlpiri Camp and endeavoured to locate Walker, again without success. Constable Zachary Rolfe and Constable James Kirstenfeldt were part of the police contingent who attended the Warlpiri Camp.

The funeral at Yuendumu did not go ahead on Friday as originally planned but was re-scheduled for Saturday 9 November 2019. It is believed Walker remained in the community following the assault upon Yuendumu Police on 6 November up until 9 November 2019. Yuendumu Police were made aware of the change in funeral arrangements and, in accordance with the agreement with family, made no effort to locate and arrest Walker between 7 – 9 November 2019.

6.4. Request for Assistance

During this time there were a number of property crimes committed in Yuendumu and, due to his prior criminal history, Walker was suspected by local Police to have had some involvement⁵. These crimes were committed on properties occupied by the Yuendumu Health staff (PROMIS 9129313 – Trespass – 9/11/19, PROMIS 9129310 – Criminal Damage – 9/11/19, PROMIS 9128959 – Criminal Damage/Attempt Unlawful Entry – 9/11/19, PROMIS 9126489 – Unlawful Entry/Stealing - 6/11/19 refers). The Health staff expressed concerns over their safety to their management in Alice Springs. At around 1100 hours the order was then given to evacuate the Yuendumu Health Clinic leaving the community without health staff. The nearest clinic to Yuendumu is Yuelumu (Mount Allen) Health Clinic, some 50 kilometres away. Yuelumu Health Clinic remained open with the expectation, in the advent of a medical emergency, they would service the community of Yuendumu.

During the morning of Saturday 9 November 2019 the OIC at Yuendumu, Sergeant Frost contacted her Divisional Supervisor, Superintendent Jody Nobbs, to advise that local Police resources were physically exhausted due to having to constantly deal with ongoing offending at all hours. She further briefed Nobbs about the pending departure of local Health staff. She informed him that here was now an expectation by Yuelemu Health staff that Yuendumu Police would accompany them on any future call-out at Yuendumu with Yuendumu Police themselves having insufficient staff to accommodate this request.

In her contact with Superintendent Nobbs, Sergeant Frost requested the services of 'specialist' police members from Alice Springs to supplement local police resources. This would in turn enable Yuendumu Police members to gain some respite after working continuous long hours. Superintendent Nobbs was supportive of the request and was cognisant of the fact that Walker remained at large within the community following on from the assault of the two police officers the previous Wednesday (6 November 2019).

⁴ According to Eddie Robertson Sergeant Frost warned that she was going to get a 'Task force'.

⁵ A 12 year old male was later identified as the offender for an unlawful entry at Yuendumu. PROMIS #9126489 refers.

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

Given Sergeant's Frost's (mistaken) belief that Walker was also likely to be involved in the recent overnight unlawful entries Superintendent Nobbs sought the approval of his Acting Assistant Commissioner, Travis Wurst, in order to sanction the use of the Immediate Response Team (IRT)⁶. Acting Assistant Commissioner Wurst was aware of the incident that occurred at Yuendumu on the Wednesday (6 November 2019) and readily approved the deployment of the IRT noting the time of approval as 1351 hours. With this approval granted Superintendent Nobbs arranged, through the Alice Springs Watch Commander, Senior Sergeant Shaun Furniss, for four members of the Alice Springs Police IRT to be called on duty on order to provide relief to Yuendumu members and in order to arrest Walker. In formulating a loose plan for the arrest of Walker and, in considering that Walker had the propensity to run from police, Sergeant Frost also requested the services of a Police Dog Operations Unit (DOU) member in addition to the IRT. This (verbal) request was also approved by Acting Assistant Commissioner Wurst. Superintendent Nobbs then instructed Senior Sergeant Furniss to proceed with the call out and deployment of an IRT and a DOU member to Yuendumu.

No request for a trained negotiator to accompany the IRT was made or considered at this time.

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

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

Following a further brief conversation between Superintendent Nobbs (telephone) and Senior Sergeant Furniss and himself, McCormack formed the abbreviated view that the IRT were to be dispatched to Yuendumu primarily to arrest Walker. According to Senior Sergeant Furniss;

'...the whole overarching thing as to um, was to effect the arrest of Walker...'

The request from Superintendent Nobbs clearly indicated that the IRT were to take their swags as it was likely they would remain in Yuendumu for a number of days. The instruction from Superintendent Nobbs mandated that the IRT were to wear 'blues' (regular police uniform) while in Yuendumu instead of wearing their alternate camouflage apparel. Superintendent Nobbs further instructed that the IRT were to take their 'full kit' to Yuendumu. In addition to aerosol subject restraint (ASR) (oleo capsicum spray), Glock pistols and electro-muscular control device (ECD) this included shotguns capable of discharging 'bean bag' rounds and AR15 rifles.

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

Mistaken belief

Sanction or approval

New Request

⁶ A requirement under the Immediate Response Team policy.

The IRT members called on duty were;

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

Hawkings is a former New Zealand police officer who served between 2005 and 2014 before being recruited to the NT Police on 10 February 2014. Hawkings was posted to Alice Springs on 25 April 2014 and remained in that location for the duration of his career. He has served on relief postings to Alpururulam, Haasts Bluff, Apatula and Lyente Apurte police stations prior to joining the IRT on 26 November 2018 and since that time, according to IRT records, has deployed on 6 general support operations. He passed his last IRT weapons qualification on 7 August 2019. Hawkings had some previous experience of approximately 6 months service in remote communities in 2014 - 2015.

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

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

Constable Zachary Rolfe (28 years), Registered Number 3638

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

Constable James Kirstenfeldt (35 years), Registered Number 3658

Kirstenfeldt is a former ADF member who, similar to ROLFE, conducted paramilitary type close protection training with Ronin International in the United Kingdom in 2010. He joined NT Police in November 2016. He was posted to Alice Springs on 9 June 2017, where he has remained. He has not served in remote aboriginal communities. He joined the IRT on 26 November 2018 and since that time, according to IRT records, has deployed on 4 general support operations. He passed his last IRT weapons qualification on 7 August 2019. Kirstenfeldt had no remote service experience.

The Dog Operations Unit member called out was;

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

Donaldson is a former ADF member who joined the NT Police on 26 February 2007. Donaldson has served in Alice Springs, Nyirpi and Darwin prior to joining the Dog Operations unit in 2015. Donaldson is not a member of the IRT, and is deployed in response to the request from Sergeant Frost and approval from Acting Assistant Commissioner Travis Wurst. Senior Sergeant Furniss called out the DOU member Donaldson around 2.00 p.m. and Donaldson immediately departed from his home residence to Yuendumu.

Unfortunately and just prior to the IRT members arriving at Alice Springs Police Station, a bus rollover occurred south of Alice Springs with multiple casualties reported. In addition to their usual designated duties both Senior Sergeant Furniss and Sergeant McCormack were involved.

in prioritising an emergency response for that event. It left little time to properly brief the on-coming IRT members.

6.6. Arrival of IRT at Yuendumu

At around 2.30 p.m. on Saturday 9 November 2019, the 4 IRT members began arriving at the Alice Springs Police Station. The message from Superintendent Nobbs to take their 'full kit', seemingly was not passed on to the IRT members. As a result the IRT decided themselves on what equipment to take with them to Yuendumu.

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

'...like I said we weren't there as IRT, we were there as a force multiplier⁷.'

In the absence of any prepared written brief (Operation Order/Arrest Plan) the four IRT members were informed by Sergeant McCormack that their 'mission' was primarily to 'arrest Walker'.

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

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

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

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

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

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

Rolfe – Glock pistol, ECD, ASR, Baton

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

'...he's done an Ops Order for it before⁸.'

Acting Sergeant McCormack, who had never before completed an Operations Order, compiled some detail around the arrest target (Walker) and then forwarded the information by email to Sergeant Frost at 4.24 p.m. Sergeant Frost added detail and then emailed the final plan to the (in-transit) IRT members and various supervisors at 4.59 p.m. Of critical importance this plan

⁷ 'Force Multiplier' is a military term defined as 'A capability that, when added to and employed by a combat force, significantly increases the combat potential of that force and thus enhances the probability of successful mission accomplishment'.

⁸ Statutory Declaration (1) of Sergeant Julie Frost, P.35

had not been compiled prior to the IRT members leaving for Yuendumu. Even so, Sergeant Frost later conceded;

*'...ah, the Ops Order that I put together had locations of interest but they were incorrect, however I knew I was going to correct the locations of interest when they got there.'*⁹

After arriving in Yuendumu Sergeant Frost handed the completed arrest plan for Walker (the 'plan') to the IRT members. There was no mention in the plan of waiting until the family of Walker were afforded the opportunity to assist with Walker's proposed surrender post funeral. The IRT members were instructed by Sergeant Frost that they were to commence general patrols of Yuendumu at 2300 hours (11.00 p.m.) that night and, if Walker failed to surrender himself prior to then, they would attempt to locate and arrest him the following morning at 0500 hours (Sunday 10 November 2019). This would involve the assistance of a local Police member, Constable Felix Alefaio, who previously had extensive dealings with Walker and knew him well by sight¹⁰. The IRT members were also informed by Frost that the local Health staff had left the community and the Community Health Clinic was closed. Despite Walker being regarded as a 'high risk' offender there was no plan to attempt to utilise a Police negotiator.¹¹

6.7. Movements of Walker during Saturday 9 November 2020

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

6.8. Actions of IRT

Instead of adhering to the 'Operation Order' that had been prepared by Sergeant Frost (and supported by Superintendent Nobbs) the IRT members disregarded the plan in preference to completing the 'mission' as assigned to them by the stand-in Officer In Charge of the IRT - Acting Sergeant McCormack. That 'mission' involved an immediate attempt to locate and arrest Walker within the Yuendumu Community¹².

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

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

HAWKINGS: *Roughly, yes –*

WOOD: *Yep.*

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

⁹ Statutory Declaration (1) of Sergeant Julie Frost, P.16

¹⁰ The IRT members were not familiar with Walker other than their observations of him on the BWV recorded by Yuendumu Police on 6 November 2019.

¹¹ Senior ACPO Derek Williams was available to assist in this regard if required. No consideration was given to deploying any one of at least 6 trained negotiators available at Alice Springs.

¹² Details of any IRT proposed, if any, arrest plan were never formalised

WOOD: Yep

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

HAWKINGS: Pretty much immediately upon our arrival.

WOOD: Yep.

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

WOOD: Yep.

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

Hawkings admitted that Sergeant Frost was not party to this brief held between the IRT members and DOU member at Yuendumu. It was apparent they were not expected any brief or direction from Sergeant Frost other than requesting advice as to where they may be likely to locate Walker.

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

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

more else
where.

The IRT members, who were all of rank junior to Sergeant Frost, clearly intended to proceed with their own 'arrest' agenda despite being told that an agreement had been set in place between Sergeant Frost and Walker's family - which was to attempt to have Walker surrender following the funeral of his uncle, ██████████ Brown. That funeral was still in progress when the IRT and the DOU member left the Station in search of Walker¹³. Despite his availability the IRT did not consider or attempt to take Constable Alefaio with them¹⁴.

Sergeant Frost described her interactions with the IRT members as follows;

'...the members really wanted to take over the conversation...and it was sort of um kind of said to me that you know "This is how we do it"..."This is what we do when we come to job, this is how"...I got the impression that they didn't really want me to tell them how to do their job...'¹⁵

It must be highlighted that the IRT members were not expecting to receive any orders from Sergeant Frost when they arrived in Yuendumu. They were aware of the 'mission' assigned to

¹³ The funeral service commenced with a ceremony held at the Yuendumu Basketball Sports precinct followed by a burial service at the Yuendumu Cemetery.

¹⁴ Constable Alefaio was included in the 'Arrest Plan' prepared by Sgt Frost for this very reason.

¹⁵ Statutory Declaration (1) of Sergeant Julie Frost. P.33

them by Acting Sergeant McCormack and remained focussed on quickly locating and arresting Walker. Despite a suggestion by Sergeant Frost that the IRT members left the station on an intelligence gathering exercise it was clear they were going to attempt to locate and arrest Walker.

After a short briefing outside the Yuendumu Police Station the IRT armed themselves with the following weapons¹⁶:

Constable Hawkings – AR15 rifle¹⁷, Glock pistol, Taser, OC Spray, baton

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

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

Constable Kirstenfeldt – Shotgun (beanbag rounds)¹⁸, Glock pistol, Taser, OC Spray, baton

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

At around 7.00 p.m., with daylight fading, the IRT and DOU member drove directly to House 577, the residence of Eddie Robertson where Walker usually stayed with his girlfriend, Rekeisha Robertson. Rekeisha's father, Ethan Robertson, was located sitting in the yard of House 577 and informed the IRT members that Walker had left the residence only minutes earlier. Despite being told this Constable Rolfe and Constable Kirstenfeldt decided to search the house in any case. Ethan Robertson then informed Constable Rolfe that Walker had most likely gone to his grandmother's house. He identified House 511 to Constable Rolfe as the location where Walker's grandmother, Margaret Nabanunga Brown, lived. All IRT members had their BWV cameras operating at this time and all actions and conversations were recorded.

6.9. IRT attendance at House 511 Yuendumu – Confrontation with Walker

At around 7:19pm, the five (5) police members attended the location identified by Robertson. Police then made various enquiries with persons in the vicinity of House 511. Constable Eberl made his way to the front open doorway of House 511 and sighted a male inside the House. He then quickly walked over to Constable Rolfe and informed him that he had sighted a male inside the house. Rolfe and Eberl then walked back around the front of the house and Rolfe briefly spoke to a female, Leanne Oldfield outside the house. He requested permission from her to enter the house but was informed by Oldfield that it was not her house and was told to ask the owner of the house (Margaret).

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

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

Instead of waiting for the other IRT members to establish a cordon around this house Constable Eberl, followed by Constable Rolfe, entered the residence where they immediately located

¹⁶ The IRT members did not take their 'full kit' as requested by Superintendent Nobbs and instead chose to randomly select lethal and non-lethal weapons of their preference.

¹⁷ Constable Hawkings carried this weapon exposed when in the Community

¹⁸ Constable Kirstenfeldt did not carry this weapon in the Community and it remained in his Police vehicle.

Walker within the main living area. When asked his name by Rolfe, Walker initially gave a false name (*Vernon Dickson*) and attempts were then made to positively identify Walker using dated images of Walker contained on Constable Rolfe's iPhone recorded from previous arrest episodes. After satisfying himself that Walker was the person standing before him Rolfe ordered Walker to put his hands behind his back. Walker reacted immediately by removing a pair of scissors from his pocket. A struggle then ensued during which time Walker stabbed Rolfe once to his left shoulder causing a minor penetrating injury to his collarbone. Rolfe responded by stepping back, removing his Glock 40 Calibre pistol from his holster and, without warning, fired one round into Walker's back. At this point in time Walker was wrestling with Constable Eberl and both fell to the ground. At some time during the struggle Eberl also received a superficial wound and bruising to his upper left arm. His police shirt also was slightly damaged.¹⁹

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

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

The entire incident, including audio, was captured on the body worn video of the involved members²⁰. The first shot was fired at 7.22.01 p.m. The second at 7.22.03 p.m. and the third at 7.22.04 p.m. At no time did Constable Rolfe issue a standard warning to Walker prior to shooting him. The wounds sustained by Walker were soon to become fatal.

6.10. Immediate Actions of Police ~~Post shooting~~ at the scene.

Walker was quickly handcuffed and evacuated from the scene by the IRT members and placed in the rear of the Police Vehicle. ~~With no Yuendumu Health clinic staff available the IRT members were directed to return to Yuendumu Police Station by Sergeant Frost.~~ Walker initially remained conscious and members endeavoured to treat his wounds as best as possible. The Health staff from Yuelumu were contacted for assistance and the Royal Flying Doctor Air Service were put on notice to undertake an urgent medical evacuation from Yuendumu. The internal injuries suffered by Walker were severe and Police attempted to control bleeding as best they could with the limited first aid equipment available to them. Once he ceased breathing Police commenced CPR and applied a defibrillator with Walker succumbing to his injuries soon after. Efforts at resuscitation ceased at 2036 hours once Rolfe himself declared Walker deceased. On arrival at Yuendumu, the Yuelumu Health Staff examined Walker then formally declared him deceased at 2109 hours²¹.

- Duplicate

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

An estimated 200 community members gathered around outside the Yuendumu Police Station after the shooting. The Police Station had been locked and was not open to members of the

¹⁹ Report of AFP Textile Expert, Timothy Simpson, 'Small hole measuring 2mm in diameter, and had associated upwards and downwards laddering. This damage had features indicative of puncture type damage with associated laddering that could have been caused by a pointed object with a blunt tip used in a stabbing or thrusting action with subsequent stretching or distortion of the fabric surrounding the puncture area'. P.4

²⁰ Eberl's BWV camera dislodged from his uniform during the struggle with Walker but continued to record.

²¹ Police members at Yuendumu deemed Walker to be deceased at 2036 hours prior to Yuelumu Health Staff arriving at Yuendumu.

public at this time. The Yuendumu ACPO, Derek Williams, remained outside the Police Station and attempted to control a volatile situation with community residents obviously upset with what had occurred. The IRT members and the DOU member remained inside the Police Station together with Yuendumu members until such time as Police re-enforcements arrived from Alice Springs and later the next morning, Territory Response Group (TRG) members from Darwin. The front double glass entrance door to the Station remained locked.²²

Shortly before mid-night Eddie Robertson rang the Police Station seeking an update as to the condition of Walker. He spoke to Sergeant Frost who notified him that she could not provide him with an update but would do so at a later time. When the Forward Commander, Sergeant Terry Zhang, arrived from Alice Springs soon after he contacted the Incident Commander (Superintendent Nobbs) seeking advice as to what information he could relay to Robertson. Zhang was advised to inform Robertson that Walker was still receiving medical treatment when, in fact, he was already deceased. Zhang completed this task stating that the decision to ring Robertson at 1207 a.m. was;

Commented [PD2]: Not sure about placement of this text

"...a way of mitigating risk of the Community sort of, not jeopardising the safety of the members in the Station."²³

Next of kin (Rekeisha and Eddie Robertson) were not notified of Walker's death until later that morning. Eddie Robertson was contacted after the arrival of TRG and requested to attend the Station around 4.50 a.m. He was then advised of Walker's death and requested to formally identify the deceased. Robertson stated this was not necessary as Walker's identity was not in question. At 6.44 a.m. Sergeant Frost, Sergeant Zhang and TRG members attended the residence of Rekeisha Robertson and informed her of Walker's death.

Within a minute of Walker being shot IRT member, Constable Kirstenfeldt, attempted to notify Sergeant Frost of the occurrence by mobile phone²⁴. Sergeant Frost, Senior Constable Hand and Constable Alefaio were still at the Yuendumu Police Station when they heard a transmission over the police radio 'shots fired, shots fired'.

The IRT members were contacted by police radio and initially advised Sergeant Frost that they were intended to conveying Walker to the Yuendumu Health Clinic. Sergeant Frost reminded them that the clinic had been closed and directed them to return to the Yuendumu Police Station. They then immediately drove to the police compound.

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

Sergeant Julie Frost (OIC)

Senior Constable Christopher Hand (Alice Springs relief member)

Constable Felix Alefaio (Nyrippi relief member)

Constable First Class Anthony Hawkings, IRT Alice Springs

Constable First Class Anthony Eberl, IRT Springs

Constable Zachary Rolfe, IRT Alice Springs

Constable James Kirstenfeldt, IRT Alice Springs

²² The glass entrance doors were covered from inside the Station to prevent anyone from outside looking into the Station. The lights inside the Station remained on but, to those congregating outside, appeared as if they had been turned off.

²³ Statutory Declaration of Sergeant Terry Zhang, P.9

²⁴ This was captured on BWV but neither Kirstenfeldt nor Frost can recall making/receiving a phone call at the time.

Senior Constable Adam Donaldson, Dog Operations Unit, Alice Springs

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

The Senior Yuendumu Aboriginal Community Police Officer, Derek Williams, who had been attending the funeral, came to the front of the Police Station with family but elected to remain outside the Police Station and attempt to placate the gathering crowd. Williams and Frost were able to communicate covertly by mobile phone with Williams electing to remain by choice outside the Police Station.

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

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

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

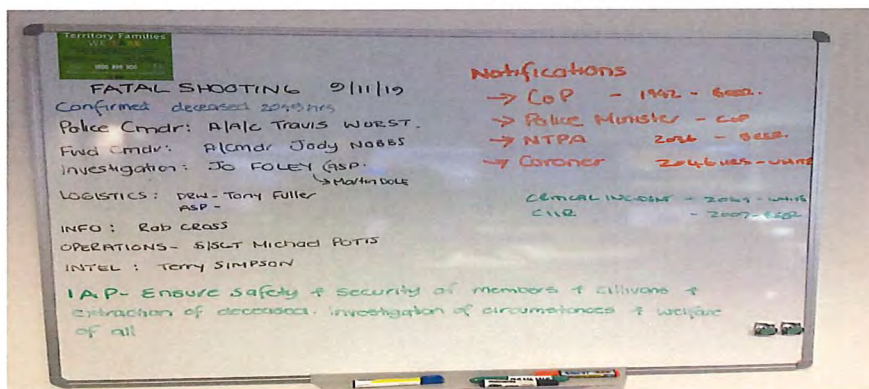
Sergeant Frost then contacted her Divisional Superintendent, Jody Nobbs and directed Senior Constable Hand to commence a 'running sheet' at Yuendumu. Superintendent Nobbs then contacted Acting Assistant Commissioner Travis Wurst.

7. Police Response — ~~Critical Incident~~ Initial Response.

At the time of receiving the notification from Superintendent Nobbs, Acting Assistant Commissioner Wurst was attending a social function in Darwin together with other senior Police executives²⁵. These Police executives included Acting Commissioner Michael Murphy APM, Acting Deputy Commissioner Michael White APM, Acting Deputy Commissioner Narelle Beer, Commander Tony Fuller APM and Police Media Director, Rob Cross.

← Command Structure —

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



Initial management structure and notifications made at the Territory Intelligence and Co-ordination Centre on night of 9/11/2019.

²⁵ Northern Territory Police Legacy Ball.

The Northern Australia Aboriginal Justice Agency (NAAJA) were notified of Walker's death by Police at 0808 hours 10 November 2019.³¹

The interview with Rolfe was delayed until investigators had the opportunity to view his BWV³². Once this occurred the senior investigator postponed the interview and a 'critical decision' was made to take the BWV footage to the Director of Public Prosecutions (DPP) for an initial (informal) opinion³³. This occurred on Monday 11 November 2019 when Detective Acting Superintendent Kirk Pennuto, Commander Martin Dole and Assistant Commissioner Crime and Integrity Nick Anticich met with the Director of the DPP. An indication was received from the Director that a serious offence had occurred and DPP requested a 'short' prosecution brief of evidence to be provided to them by Wednesday 13 November 2019 at which time a considered opinion would be provided to police.

Despite now clearly being a suspect involved in the commission of a serious crime (murder/manslaughter) no direction was given to Rolfe by Senior Police to refrain from associating with other police members, including primary witnesses, prior to Rolfe being interviewed. On Monday evening the following off-duty members gathered at Rolfe's residence to socialise and provide support to Rolfe;

Constable Breanna Bonney
Constable Luke Crotty
Constable Adam Eberl
Constable Mitchell Hansen
Constable Anthong Hawkings
Constable Paul Henderson
Sergeant Evan Kelly
Constable James Kirstenfeldt
Acting Sergeant Shane McCormack
Constable Mark Sykes
Constable Marc Watson

On Tuesday 12 November 2019 investigators attempted to obtain a statement from Rolfe but, after receiving advice from his legal representative, Rolfe formally declined to provide an account beyond what the BWV already revealed. Rolfe had made notes of the incident in his official police note book but investigators were not aware that it existed.³⁴ The whereabouts of this notebook remains unknown.

Not sure
where the Nts
yet

³¹ PROMIS 9129856 Case log #43

³² Rolfe's BWV was uploaded to Evidence.Com at 1229 hours, 10 November 2019 and viewing access was restricted by investigators at 1353 hours. Operation Charwell investigators first viewed the footage in Alice Springs at 1409 hours.

³³ This 'Critical Decision' was not recorded on the Investigation log as required by the Instruction - 'Major Crime, Major Investigation and Critical Incident Response'

³⁴ Investigators seized the police notebook of Rolfe when he returned from Yuendumu to Alice Springs. He obtained a new notebook from Alice Springs Police Station on 10 November 2019 and he then recorded notes of the incident in this notebook.

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

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

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

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

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

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

During the assembly at the front of the Police Station some community members began to throw rocks on the roof of the Police Station. The situation outside the Police Station remained quite volatile to the extent that at one stage the police members inside the Yuendumu Police Station were given the order to evacuate by Superintendent Nobbs. They then assembled in their vehicles inside the police compound, placing the body of Walker, in the rear of one of the police vans, before the decision to evacuate was overturned by Acting Deputy Commissioner Beer. Despite being directed to leave ACPO Williams refused to consider leaving the community and remained at the front of the Police Station.

Once community hostilities ceased, Constable Zachary Rolfe surrendered his weapon, body worn video camera, utility belt and clothing for forensic examination²⁶. During this time he informed Constable Hawkins of the injury to his left shoulder received during the attempted arrest of Walker. Constable Hawkins took photographs on his mobile telephone of the injury and of damage to the shirt and under vest of Constable Rolfe.

Eberl did not initially report receiving any injury at the time although he later stated in his second interview²⁷.

- WOOD: *Um, did you receive any injuries?*
-
- EBERL: *Not that I know of, but I would like to have a look at my shirt because I have a scratch here which could have been from the scissors, I don't know.*

Add to initial
acc at scene.

6.10

8

Acc at
scene.

6.10

Injury to
Rolfe 6.11

Eberl.
6.11

²⁶ Constable Rolfe had already washed his hands upon return to Yuendumu Police Station as observed on BWV.

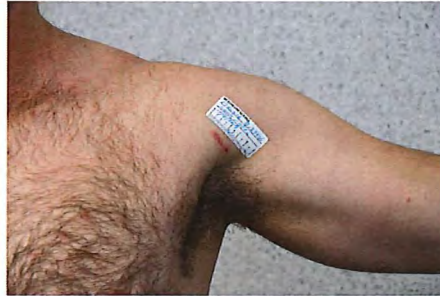
²⁷ Statement of Constable Adam Eberl (2), P.59

-
- WOOD: Yeah.
-

EBERL: *But I never – never mentioned it to anyone other than the other day, but um –*



Injury sustained by Rolfe as photographed by Hawkins



Injury reported by Eberl on 13 November 2019

Once the Alice Springs relief members arrived Constable Rolfe was then conveyed back to Alice Springs via police aircraft. He provided his consent to a voluntary 'non-intimate sample kit' (NISK) allowing his injury to be further photographed and he was then treated at Alice Springs Hospital for a minor puncture wound to the region of the left collar bone²⁸. Members of his Alice Springs patrol group were allowed to visit him and speak with him while he was waiting at the hospital. He was not questioned by investigators at this time and was allowed to rest with the intention of obtaining an account of events later on in the day (Sunday 10 November 2019).

All other involved IRT members and the DOU member were immediately subjected to an interview when they were returned to Alice Springs.

During the morning of Sunday 10 November 2019 a 'critical decision' was made to appoint Detective Acting Superintendent Kirk Pennuto, Crime Division, Darwin, to the position of senior investigator in charge in place of Detective Superintendent Foley. Acting Commander Martin Dole was appointed as the Commissioned Officer in overall charge of the investigation subsequently named '**Operation Charwell**'²⁹. A Major Crime investigation team and members of the Professional Standards Command were dispatched to Alice Springs to commence a 'Coronial and Critical Incident' investigation.

At 7.24 a.m. a 'crime scene' was established by Police at House 511, Yuendumu. The crime scene had not been declared earlier due to concerns about the safety and welfare of any police officer assigned to guard the scene. The house had been secured and locked by family overnight and police forensic member examined the scene with the scene being closed by the investigation team at 9.40 p.m. 10 November 2019.³⁰

²⁸ The voluntary 'NISK' application stated that the offence under investigation was that of 'manslaughter'.

²⁹ The name 'Operation Charwell' was applied to both the Criminal and Coronial Investigations.

³⁰ Recorded in PROMIS 9129856 as a 'Critical Decision' – Case log #88 refers.

Actual of Alice Springs
→ ?
⊙ ?
→

On 12 November 2019, in consultation with the Deputy Coroner and with the likely arrest of Rolfe pending, a decision was made to appoint a Commissioned Officer In Charge of the Coronial Investigation separate to the senior investigating officer³⁵. This was brought about due to the somewhat unique circumstances that required two streams of investigation with one reporting to the Coroner in accordance with the Police General Orders – ‘Coronial Investigations and Inquests’ and ‘Deaths in Custody and Investigation of Serious Incidents and/or Fatal Incidents resulting from Police contact with the Public’. The other, being the criminal investigation, focussed on the requirements of Police General Orders – ‘Major Crime, Major Investigation and Critical Incident Response’ and ‘Northern Territory Incident Control System’.

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

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

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

COMMENTS: →

? Focus Areas ?

8.

1. Death In Custody

At the time when Walker received his fatal injuries police were attempting to effect his arrest and place him into custody. Accordingly his death is a ‘reportable death’ under the provisions of S12(1) of the *Coroners Act 1993* [NT].

2. The Immediate Response Team (IRT)

8.1.

8.1.1. Background

The operations of the Alice Springs Immediate Response Team are prescribed in a local instruction (Standard Operating Procedure) (SOP). These SOP’s were formulated in 2017 in order to upgrade the initial response capabilities and enhance the skills of select general duty members serving in the Southern Region. Prior to 2017 the Alice Springs Police relied on a ‘Cordon and Containment’ team (ASPCCT). The leader of this team, Alice Springs Sergeant Lee Bauwens, sought to enhance the skills and capability of the Cordon and Containment team and in 2017 the IRT SOP was ratified, subject to conditions, by the then Deputy Commissioner, Grant Nicholls. It was noted at the time;

Ref source 8.1.1.

“The ASPCCT are not part of the validated and accredited Australia New Zealand Counter Terrorism Committee (ANZCTC PTG). Their deployments should not be governed by the TRG on-call Tactical Commander. The Tactical Commander is a

Footnote request.

³⁵ Superintendent Scott Pollock was initially nominated to fill this role on 12 November 2019 with Commander Proctor later officially delegated the role on 10 August 2020.

position designated within the PTG and can only offer advice on what is essentially a local-level capability. For all planned significant high risk incidents, and unplanned high risk incidents that become protracted, the ASPCCT are not the appropriate force to resolve a situation that is significant-high risk".

In 2017 the naming convention of the ASPCCT was changed to better reflect the nature of the duties the ASPCCT were expected to perform – hence the title 'Immediate Response Team' (IRT).

The SOP's state;

The Alice Springs Immediate Response Team (IRT) has been established in recognition of the need for Alice Springs and Southern Command to have a capability that is able to respond to critical incidents where accepted tactics of cordon, contain and negotiate have failed or been unsuccessful, the Territory Response Group are not able to respond within a suitable time frame to resolve an incident and the nature of the incident is such that an urgent police response is required to prevent loss of life or serious injury.

The IRT is a part time capability comprised of officers who have been provided skills enhancement training above that of a front line general duties officer to enable them to respond to critical incidents. The IRT are not trained to the level of a Police Tactical Group (PTG) nor are they expected to fulfil this role, they will however when circumstances (as highlighted above) dictate be required to utilize the skills and training they have been provided.

The IRT members are ~~basically~~ general duty police officers who volunteer 'as required' on a part time basis to form a contingent of members capable of responding to critical incidents in the absence of the immediate availability of Tactical Response Group (TRG) members. The IRT members are recruited from the pool of Alice Springs General Duties members with a preference for members with military experience. A cadre of 15 – 16 trained members is preferred. Training (usually firearms) is provided to selected and available IRT members one day a month. With the type of skill set required preference for selection for IRT duties is heavily weighed in favour of ex-military members. Yearly training assessments of IRT were to be undertaken by TRG members.

The IRT are a 'Command Asset' within Alice Springs and therefore the Commander, Alice Springs, must authorise the deployment of the IRT. This is mandated in the IRT SOP.

The SOP's are a localised instruction with the local Alice Springs Commander responsible for their content and administration. Assistant Commissioner Dr Narelle Beer reported on the IRT SOP's, post shooting, to Deputy Commissioner Michael Murphy in her memorandum (dated 27 November 2019)

'There is no overarching policy that establishes the functionality, objectives or scope of the IRT...Based on the lack of apparent governance, consultation and promulgation of these procedures (and in the absence of any specialist skills, abilities or expertise by the author – Williams) I cannot evidence base appropriate rigour around the development of these SOP's.

Her report is highly critical of the IRT SOP's.

8.1.1.

Ref. + Footnote.

8.1.3.

Is this reference anywhere.

It is not in the SOP.

8.1.3.

8.1.3.

8.1.4.

Lack of consultation and promulgation. These were promulgated in 2017.

The SOPs were developed in consultation with OIG TRG.

Is this a copy of the AC not knowing of their existence?

8.14 The SOP do not stipulate that Operation Orders or arrest plans are required prior to deployment nor is a detailed written risk assessment required for an arrest target. The lack of formal intelligence documentation and planning in IRT operations often appears minimal. This requirement should be standard practice and is an oversight in the IRT SOP. The operations of the IRT appears to have expanded considerably from the originally concept and has led to what can only be described as 'mission creep'.³⁶ Since 2017 there have been 39 deployments of IRT members comprising;

- 3 search and rescue episodes
- 6 responses to community disturbances/riots
- 9 targeted arrests
- 21 others matters (general – rock throwing episodes/surveillance requirements/close personal protection)

(ROLFE is recorded on 4 of the CNE's in 2019 and 2 in 2018 – one of which was stood down prior to deployment). A team leader was appointed on 9 of those 39 occasions (either Sergeant Bauwens or Constable 1/C Vivian)³⁷.

8.14 The IRT is maintained as a part-time capability and while there is mention of an OIC, 2OIC and Team Leaders in the SOP there was no requirement for these positions to be maintained in the absence of the IRT member/s who are usually nominated to one or all of these 'part-time' positions. At the time of Walker's death the IRT OIC (Sergeant Lee Bauwens) and IRT 2OIC (Cameron Vivian) were on leave and no stand-in replacement had been allocated the role.

8.14 Any IRT call-out does not stipulate a mandatory requirement for the nomination of a suitably experienced team leader. Deploying the IRT to Yuendumu to arrest a high risk offender without a nominated senior officer in charge was a major failing. Ordinarily the most senior member of the group would assume this responsibility by virtue of seniority of rank. In this case that was Constable First Class Anthony Hawkings. Hawkings stated in interview that while no-one was specifically appointed as team leader Rolfe provided the briefing around the arrest of Walker stating to the team;

"there's not much that intel that we've been given".

Rolfe did at least demonstrated some initiative and showed the Body Worn Video footage of the incident involving Walker and the Yuendumu Police from the previous Wednesday to the other IRT members prior to leaving for Yuendumu. Hawkings stated that due to the fact that Rolfe was the most experienced IRT member he was considered by him to be leading the IRT deployment to Yuendumu. Ironically Hawkings accepted the role of team leader once Walker and the IRT members returned to the Yuendumu Police Station post shooting.

An independent risk assessment was conducted on Walker, post death, and he was classified as a 'high risk' arrest target³⁸. As such the IRT should not have been deployed

³⁶ 'Mission Creep' – 'The gradual addition of new tasks or activities to a project so that the original purpose or idea begins to be lost' (Definition – Cambridge Business English Dictionary)

³⁷ PROMIS 8905514 (2018) & 8854742 (2019) refer.

³⁸ Statutory Declaration of Senior Constable Erin Simonato, Territory Response Group Intelligence Officer

— Not correct.
The SOLS do reference that all plans and actions are to be completed and submitted to OIC TRG for High Risk. Deploy.

8.1.3.

Walking.

without the consultation of a TRG Tactical Commander. The benefit in doing so in this circumstance would, in the advent of TRG unavailability, have led to a designated team leader being appointed and a pre-planned structured response being in place before the IRT left for Alice Springs.

The IRT policy states that *'planned high risk operations are the responsibility of the TRG'*. It is evident that Walker, with Alerts against his name warning that he may try to escape, may be suicidal and may use violence, was always going to be considered a high risk candidate for apprehension and, therefore, planning for a possible high risk episode should have been mandatory.

✓✓ 8.16

In reviewing the circumstances that warranted such a response the IRT should not have been deployed without a designated team leader or prior to a prepared and approved Operational Order. Had a proper risk assessment been undertaken for Walker he would have been determined to be a 'high risk offender' with a known propensity for violence as evidenced during the attempted arrest on 6 November 2019.

✓✓ 8.16

The behaviour of Walker demonstrated towards police in the days preceding his death combined with his status of an absconding felon and known propensity for violence warranted a high level response that should have included an appropriate risk assessment. The IRT should not have been deployed from Alice Springs on such a high risk operation without at least consulting a TRG Team Leader and with a prepared arrest plan in place.

✓✓ 8.16

The accountability for approving the IRT deployment to Yuendumu rests with the (then) Acting Assistant Commissioner (Wurst) and Divisional Superintendent (Nobbs), neither of whom seemed to have a knowledge of the detail contained in the SOP required for a planned high risk deployment. In this regard the IRT SOP is clear;

✓✓ 8.16

'Planned high risk operations are the responsibility of the TRG. Any requests to the IRT for support in a high risk planned operation must be referred to the OIC TRG who can then make an appropriate assessment of the task and the risks, and determine the role of IRT in the operation'

✓✓

Commander Wurst provided the following responses when questioned around his knowledge of the SOP's;

- WELLFAIR: *And are you aware of any, um, Standard Operating Procedures or Policy with regards to the IRT?*
-
- WURST: *Ah, I know that when I left it was being developed*³⁹ -
-
- WELLFAIR: *Mm-hm.*
-
- WURST: *- ah, and I don't know what happened, um, post my departure from Alice Springs.*
-

³⁹ Commander Wurst left Alice Springs on transfer to Darwin on 16 August 2015 – prior to the current IRT SOP's being developed and ratified.

•WELLFAIR: *Have you seen any SOPs or any drafts of SOPs since then?*

•

•WURST: *No.*

•

•WELLFAIR: *To your knowledge how are the IRT deployed, i.e. what's the process?*

•

WURST: *Well I couldn't give you any great detail. Ah, other than I can only assume now with my knowledge, that they – it requires Commander approval for deployment based on a - on a need.*

•WELLFAIR: *Okay. Have you ah, previously deployed or been authorised the deployment of IRT?*

•

WURST: *No not IRT as they are now⁴⁰.*

Superintendent Nobbs provided the following responses when questioned around his knowledge of the SOP's;

• WELLFAIR: *And you mentioned um, SOP, Standard Operating Procedures, with regards to the IRT, um how familiar are you with those?*

•

NOBBS: *Look when I first I got here I think the first deployment I had a look at it, um but to, to be honest I haven't looked at it since then other than post this event, um, so I, I was familiar enough to, to satisfy myself that I had a good understanding of what a deployment looks like in terms of um levels of authority um etc⁴¹.*

The operations of the IRT were suspended by the Northern Territory Police following the death of Walker and are now subject to review.

Adherence to the Immediate Response Team SOP

Once the IRT SOP was ratified in 2017 it became apparent that strict adherence to the SOP was not maintained. This was evidenced in the training records of the IRT members as recorded in SPECTR. The OIC of the IRT is responsible for ensuring training standards and records are maintained as required.

All IRT members are required to undergo a validation training block (conducted over 5 days) each year. This training is conducted by the Tactical Response Group (TRG). The IRT training records indicate that this annual training requirement was conducted once in April 2018 and not at all in 2019.⁴² If this is the case then no IRT member in Alice Springs would have been qualified under the SOP's and therefore all would have been unavailable for selection for IRT duties at the moment in time when the IRT were deployed to Yuendumu in November 2019. The current IRT SOP police states;

⁴⁰ Statutory Declaration (1) of Commander Travis Wurst, P.30

⁴¹ Statutory Declaration of Superintendent Jody Nobbs, P.64

⁴² TRG conducted annual training on 8 IRT members in Alice Springs 23 – 27 April 2018.

3.1.1 IRT members requalifications

Each IRT member must requalify in the following every 12 months:

- Less lethal Shotgun

Each IRT member must requalify in the following every 6 months:

- IRT range shoot
- IRT Close Quarter Tactics (CQT) 5 room test

These skills are considered the basic drills needed to remain proficient in the core functions of the IRT.

All training carried out is to be directed towards achieving the Performance Objectives applicable to the IRT. To achieve this, it is intended to formalise the recording of all training, results, and faults, with the view of improving operational efficiency of members of the IRT.

TRG will provide an annual validation of equipment, training and tactics, and IRT members will be tested and evaluated to ensure a proficient standard is maintained. IRT members must pass the annual assessment to remain on the unit.

The training records for IRT members appear to have been poorly maintained. Constable Rolfe had only 5 training attendance dates recorded from 2017 - 2019 listed in SPECTR when he was rostered to attend IRT training every 5 weeks. According to the SPECTR records Rolfe did complete an 'IRT Qualification shoot' on 13 July 2019. TRG did not conduct that validation/assessment⁴³.

Further stipulations apply to the eligibility of IRT members as follows;

Members who are the subject of disciplinary action will be stood down during the investigation or subsequent penalty period at the discretion of the Commander Southern Command, and in consultation with the OIC IRT and Alice Springs Divisional Superintendent.

At the time of being called out on 9 November 2019 Constable Zachary Rolfe had several internal matters under investigation (complaints against police)⁴⁴.

Recruitment into the IRT

Selection for the IRT is conducted at a local level in Alice Springs. A selection panel, chaired by the Commander in Alice Springs, usually includes the Alice Springs Divisional Superintendent, Officer-In-Charge of the IRT and a Northern Territory Police Association (NTPA) local delegate. The IRT contingent is aimed at maintaining around 15 - 16 members with a preference for members with previous military experience.

⁴³ No request was made to TRG in 2019 for annual validation training to occur - Email - TRG A/Superintendent James Gray-Spence to Operation Charwell member (Kingston) dated 24/9/2020.

⁴⁴ PSC Career Review dated 20 November 2019 - Rolfe had 2 Complaint Against Police (CAP) and 1 Internal Investigation matter on 9 November 2019

ICENCIRE Training

All NTPOL members are taught a planned model when dealing with incident management, particularly those type of incidents that involve violent offenders. This 'cordon and containment' model is referred to as 'ICENCIRE'. 'ICENCIRE' is an analogy comprising of the following;

- I – Isolate** - Isolate the offender to a location under your control (inner perimeter)
- C – Contain** – Contain the incident location to minimise the threat and control the area (outer perimeter)
- E –Evacuate** – Evacuate those not involved who may be in danger from within perimeters
- N – Negotiate** – Negotiate to bring about a successful resolution (if applicable)
- C –Conclude** – Conclude the incident in the most appropriate manner (arrest/hospital/make safe)
- I – Investigate** – Investigate the cause and consequences of the incident
- R – Rehabilitate** – Rehabilitate the scene/residents/victim/officers involved
- E – Evaluate** – Evaluate procedures used to identify deficiencies and successes

All IRT members who attended Yuendumu were trained in the 'ICENCIRE' principles. These principles should have been considered and applied when they set out to locate Walker. The approach to House 511, (as evidenced by the 3D re-enactment of events) was a poor example of cordon and containment. The radio communication between the IRT members, at the time when Walker was suspected of being the male inside House 511, was deficient with Rolfe transmitting;

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

With Walker's family members present there was an ideal opportunity to properly call in all members to cordon the house and negotiate the (then unknown) male from the premises. By entering the premises in haste both Constable's Eberl and Rolfe place themselves in a situation best described as 'officer created jeopardy'⁴⁵. This action was not consistent with IRT training or the ICENCIRE model. A planned response, with a suitably experienced team leader in place, would have most likely avoided the death of Walker from occurring.

Communication failures

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

⁴⁵ Defined as situations where officers needlessly put themselves in danger, committing an unforced tactical error that makes them vulnerable and thus in a position where they must use deadly force to protect themselves.

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

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

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

Had the message from Superintendent Nobbs been properly recorded and passed on to the IRT members they would have understood exactly why they were required to wear their 'blues' (uniform) and the tasks they were expected to perform in addition to the arrest of Walker. The preparation and approval of the Operation Order/Arrest Plan should have been completed and made available to the IRT members well in advance of their departure to Yuendumu.

Superintendent Nobbs further reported that he contacted Acting Assistant Commissioner Wurst at 11.45 a.m. on Saturday 9 November 2019 to obtain approval for the IRT and DOU deployment. A/Assistant Commissioner Wurst reported receiving the (same) phone call from Superintendent Nobbs at 1.51 p.m. This discrepancy in the approval process became the critical difference in time for deploying the IRT to Yuendumu. An earlier IRT deployment would have provided them with a reasonable timeframe to enable for Walker to be located during daylight hours rather than scampering around the community attempting to locate him before nightfall. (Despite the obvious time difference both Nobbs and Wurst maintain their record of events are correct).⁴⁶

'Critical Incident' – v – 'High Risk'

On Saturday 9 November 2019 Superintendent Nobbs decided the IRT deployment was necessary in response to what he called the 'critical incident' that occurred at Yuendumu on the previous Wednesday Afternoon ("the axe attack"). Had Superintendent Nobbs properly assessed the arrest of Walker as a 'high risk' incident he would have been aware that Territory Response Group (TRG) assistance would then be required and that the IRT would not have been an option. A 'high risk' assessment would have compelled Superintendent Nobbs to refer the arrest of Walker to his Assistant Commissioner for

⁴⁶ Phone records support the contact time between Nobbs and Wurst as being 1.51 p.m.

TRG assistance. As a 'critical incident' response did not necessarily require any TRG assistance he could resolve the situation utilising local resources with the approval of his Commander.

A 'critical incident' has various references in Police policies that have different interpretations. For example, a 'critical incident' referred to in the Police Instruction 'Major Crime, Major Investigation and Critical Incident Response' does not have a specific definition but states;

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

A 'critical incident' is defined under the 'Critical Incident Response' Instruction and Procedure as:

'Any event with the potential to cause psychological injury to people directly impacted, or exposed to the event. This includes any threat, actual or perceived, to the life or physical safety of the individual, or colleagues, and exposure to events involving actual or potential harm to others.'

Superintendent Nobbs provided the following explanation regarding his use of 'critical incident' terminology;

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

While it is difficult for me to provide you with a definitive definition of my use of the term Critical Incident, as the term forms part of my broad policing vernacular and a term I use on a very regular basis, often very liberally. The term critical incident for me touches on/could impact a multitude of issues such as: member welfare, community confidence, community safety, are subjectively serious or matters that are political, environmental and internally sensitive. While I certainly don't constrain or link the term critical incident to high risk incident in isolation, I recognise that a high risk incident will more often than not be considered a critical incident and equally that there is generally a heightened sense of urgency attached to an event where I utilise the term.

In the context of the two events above:

- *Incident 1: after discussions with Sgt Frost about the nature/specifics/impacts of the incident on the night my assessment and subsequent utilisation of the term Critical Incident, related at the time to member welfare and the need for S/Sgt Potts to meet our welfare obligations to the members through ESS referral, the clear serious nature of the event and associated offences committed, the internally sensitive and inevitable interest that would arise from the incident from Police Management, hence my request for WEBEOC notification and ESS referral;*
- *Incident 2: the term Critical Incident in the context of this event I think is clear and touches across all of the considerations I have outlined above.*

'High Risk' references are contained in the Police General Order – 'Territory Response Group' and stated as follows;

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

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

Further the General Order states:

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

By deeming the IRT deployment adequate in response to a 'critical incident' instead of what should have been classified as a 'high risk' incident Superintendent Nobbs provided his justification for selecting the IRT to fill the task of arresting Walker instead of the TRG. The advantages in doing so was initially cost (savings) and time. Had a risk assessment been conducted on Walker he would most certainly have been categorised as a 'high risk' offender and the TRG team leader would have had to have been at least consulted as a minimum response as per the IRT SOP's. Superintendent Nobbs did make a concession during his interview when asked;

- *WELLFAIR: How would you describe the um the risk level of Mr WALKER as an arrest target?*
- *NOBBS: Certainly a, a, a high-risk ah target um, but yeah particularly in the context of ah his engagement with Police on Wednesday, it's, it's clear it's a high-risk ah and it was on that basis that we established the mitigations around that to mitigate that risk.⁴⁷*

⁴⁷ Statutory Declaration of Superintendent Jody Nobbs, P71

During her evidence at the committal hearing Sergeant Julie Frost had no issues in her assessment of the risk Walker posed. She confirmed she wanted Walker arrested early on Sunday morning as it was generally;

FROST: *"a safer time for a high-risk arrest"*.

On the basis of these concessions it remains difficult to justify why the IRT deployment was even considered, let alone supported.

Non lethal options available to (IRT) members

Just hours after viewing the BWV footage and criticising the Yuendumu police members who were involved in the axe incident with Walker on 6 November 2019 Constable Eberl found himself in a very similar predicament. He later commented about the previous assault on police;

EBERL: *You know, I think other members were saying similar things, I can't really recall exactly what they were saying, but um, yeah I was surprised, um, to be honest, that, um, either a taser or firearm wasn't used on him yeah.*

Despite knowing Walker to be potentially violent Constable Eberl then went to Yuendumu without equipping himself with an ECD (Taser).

In 2012 all Police Officers were directed under the then General Order – *Operational Safety Training and Procedures* – as follows:

'Officers MUST carry an ECD (where the officer is qualified and an ECD is available) whenever they carry a firearm'.

This was amended xxx

Constable Eberl was qualified in the use of an ECD, had an ECD available to him, and despite Superintendent Nobbs direction for the IRT members to take their *'full kit'* to Yuendumu, Constable Eberl elected not to do so.

WOOD: *Is there any reason why you did not take a taser?*

EBERL: *Um, I don't usually carry one around while I'm patrolling on a push bike so, that's my usual duties⁴⁸.*

He further expanded on his statement;

WOOD: *Yep. So they're the items that you took out to Yuendumu. What were the items that you conducted the patrols?*

EBERL: *Yep. So I left my AR at the station with my um, my camo gear um, plater carrier. Um, plate vest that the IRT usually have, so I just had my glock, my usual standard patrol stuff so um, spray, baton, cuffs, torches, yep.*

⁴⁸ Statutory Declaration of Adam Eberl (2) – Page 15

WOOD: Yep. Um -

EBERL: *On my belt, there's not any room for another holster for my um taser. Cause' usually when I do a GDs shift at work I've got a ballistic vest that they, you know the ELBV, that vest they give all members, and I have my taser holster in there. So if I do a GDs shift I'll chuck that on and I'll chuck everything in there so -*

WOOD: Mm-hm.

EBERL: *That's why I don't - cause I don't have a particular holster that's -*

WOOD: Yeah.

EBERL: Yeah⁴⁹.

Constable Eberl's arbitrary decision to not equip himself with an ECD (Taser) left him with the inability to use a 'non-lethal weapon' of obvious choice when Walker began to resist arrest.

The IRT SOP's made no mention around member deployment with weapons (both lethal and non-lethal options).

Police Powers of Entry - House 577 & 511 Yuendumu

Subject to outcome - Committal/Trial?

Police care and treatment of Walker post shooting

The police response to the first aid efforts applied to Walker by Police after he was shot was reviewed by Professor Michael C Reade AM. Professor Reade is a medical practitioner who holds general and speciality registration in the clinical specialities of anaesthetics and intensive care medicine. He has been the Director of Clinical Services for the Australian Regular Army and hold formal qualifications in prehospital care of ballistic casualties. He is considered to be one of Australia's most prominent medical authorities in the treatment of major trauma, including gunshot injuries.

Professor Reade summarised his review as follows;

'In summary, I believe that from the moment that the bullet that caused wound B reached the end of its wound path, in the circumstances present at the time, Mr Walker was going to die regardless of any efforts made by the police officers present. The police officers present rendered first aid largely consistent with their NT Police and, where relevant, Australian Defence Force training. In part, this training and its associated protocols inappropriately prioritised "medical" causes of cardiac arrest, such as myocardial infarction from ischaemic heart disease, that

⁴⁹ Statutory Declaration of Adam Eberl (2) - Page 16

would be treated effectively with an Automated External Defibrillator (AED), and deprioritised causes of cardiac arrest due to trauma, such as maintenance of an open airway, relief of haemopneumothorax, and maintenance of the circulating blood volume with the minimum possible amount of intravenous fluid. This represents an opportunity for improved training in situations when penetrating trauma due to firearms is possible, but it does not reflect on the actions of the police involved at Yuendumu in any way.

Mr Walker might have survived his wounds had the clinic been open and staffed with its usual complement of Remote Area Nurses and had an aeromedical retrieval team from Alice Springs arrived in the fastest possible time. However, this is not certain, and in any case such speculation is of questionable value as the clinic staff had been withdrawn some hours before Mr Walker was shot.

I observed the treatment provided to Mr Walker by the police officers in Yuendumu to be focussed, attentive, and that it displayed an appropriate sense of urgency and appreciation of the gravity of the situation. I believe the police officers would have rendered similar treatment, with the possible addition of expired air resuscitation and more prolonged resuscitation attempts, neither of which would have altered the outcome, had it been one of their own colleagues that had been shot.'

Once Walker stopped breathing and cardio-pulmonary resuscitation (CPR) efforts were commenced a call to the St. Johns operator in the Joint Emergency Services Call Centre (JESCC) was made by Senior Constable Hand at Yuendumu. The St. Johns operator (Lana Harman) offered advice around performing CPR, Expired Air Resuscitation (EAR) and using the AED. It may have been prudent to have made this call earlier and that may have assisted with assessing the haemopneumothorax injury but ultimately, without specialist medical care and facilities at hand, this would have not prolonged Walker's life to the extent that such treatment could have been provided.

When the St. Johns operator mentioned EAR to the police officer at Yuendumu the following conversation occurred;

AMBULANCE: *Okay, now I'm just gonna tell you to, how to give mouth to mouth just to make sure we're doing it correctly, so if someone there can place their hand on his forehead, their other hand on under his neck and then tilt the head back.*

HAWKINGS: *Yeah, ah this point we are not gonna do mouth to mouth. Anybody gonna do mouth to mouth?*

POLICE OFFICER (HAWKINGS): *No.*

HAWKINGS: *Just ah due to the fact that he's ah one of our Prisoners and –*

AMBULANCE: *Okay, yeah, no that's fine.*

HAWKINGS: *– health and safety reasons for us, we're not going to be doing mouth to mouth.*

AMBULANCE: *Yeah, okay, no, that's fine.*

HAWKINGS: *We don't have a (inaudible).*

AMBULANCE: *That's completely fine. Alright now –*

HAWKINGS: *We're waiting, we're waiting our medical, our medical staff to get here*

At the time of Walker's death all IRT members at Yuendumu held currency in their Emergency Care Management Program (First Aid) training. Given the additional level of first aid training Kirstenfeldt claimed to have received during his military career and in considering the injuries suffered by Walker, EAR should have been provided. Appropriate mouth to mouth kits were in the police vehicles at Yuendumu and available to the members if required. Instead the IRT members were more focussed around obtaining a defibrillator and applying that when required.

Despite Health Staff being 30 - 40 minutes away CPR efforts were abandoned by the IRT/DOU member. This is contentious. The Australian Resuscitation Council state that;

"CPR should only cease when:

- The patient is responsive and their breathing normal*
- Qualified help arrives*
- It is impossible to continue through exhaustion*
- An authorised person pronounces death (ONLY a medical Doctor/fully qualified Paramedic can announce death and stop CPR)"*

This advice is consistent with the First Aid training provided to NT Police, however Professor Reade concludes in his report;

'Termination of attempts at resuscitation 24 min 14 secs after it commenced without meeting any of the four criteria....However, these guidelines are written without regard to circumstances...in which Mr Walker has deteriorated despite all the interventions the police officers were able to provide...I believe the decision to terminate resuscitation at this point was correct'⁵⁰

Despite speaking with the St. Johns operator at around 8.31 p.m. and being told to call St. Johns back if efforts at CPR were to cease Constable Zachary Rolfe and the IRT members made that decision themselves. This decision was made at 8.36 p.m. No call was made back to the St. Johns operator as requested.

The Yuendumu Health staff were able to officially confirm that Walker was deceased when they arrived at Yuendumu Police Station at 9.08 p.m.

There was some criticism levelled at the Royal Flying Doctor Service (RFDS) regarding the delay leaving Alice Springs. The RFDS response was to firstly ensure that their safety was guaranteed at Yuendumu. This could not be immediately provided. By the time supporting mechanisms were put in place Walker had passed and the intention to fly to Yuendumu was then cancelled.

⁵⁰ Para 41, P25 Professor Michael C Reade AM, 'Expert Witness report regarding death of A ██████████ er on 09 November 2019'. Reade is also a member of the National Committee on the Australian Resuscitation Council.

Policing Culture in Alice Springs

The behavioural concern of Police in Alice Springs in general could not have a better example than on 9 May 2017 (PROMIS Case 8139519) when the Alice Springs 'Cordon and Containment Team' responded to a disturbance at the Warlpiri Camp in Alice Springs⁵¹. A female Police Officer was assaulted (kicked in the thigh) during an arrest the previous evening and Police used ASR on persons who attempted to intervene in the arrest. The following morning the 'Alice Springs Cordon and Containment Team'⁵² attended the Warlpiri Camp armed with their Glocks, Tasers and a bean bag shotgun. With weapons drawn Police conducted house to house searches utilising the provisions of the 'Liquor Act' and arrested 3 persons on warrants in retribution for the assault on police the previous evening. At the time this heavy handed police response was sanctioned by Alice Springs management. In condoning such behaviour the Police in Alice Springs were led into the belief that excessive force used during an arrest would be condoned by those tasked to review any 'Use of Force' submission.

A "Use of Force" submission for this event was submitted by the Senior member of the ASPCCT stating '...*Note – the force used was in response to Community disorder the preceding evening*'⁵³. Despite the reviewing officer raising concerns over the use of force the matter was finalised with a notation from the Alice Springs Divisional Superintendent '*The general response requirements and subsequent use of weapons will be included in the SOP that will be promulgated by end of June....Guidance will be included in regards to weapons use*'⁵⁴.

By the 9 November 2019 the policing culture in Alice Springs had degenerated into a state where unacceptable police behaviour was allegedly being condoned by supervisors and senior police management. This seems evident in the review into the 'Use of Force' reports involving Constable Zachary Rolfe conducted by Senior Sergeant Andrew Barram.

During his short career Constable Zachary Rolfe had already recorded 46 'Use of Force' involved entries in PROMIS. A 'Use of Force' Case Note Entry (CNE) is required to be entered in PROMIS by the involved Police Officer's in accordance with the *Police General Order and Instruction: Operational Safety and the Use of Force*. In accordance with the directions provided in this General Order and Instruction Police should only use force that is reasonable, necessary, proportionate and appropriate to the circumstances. Police should only use the minimum amount of force required for the safe and effective performance of their duties. When force is use supervisors have a responsibility to audit the force used by the police officers to determine whether the force used was appropriate and necessary.

A review of Constable Zachary Rolfe's 'Use of Force' involvements led Senior Sergeant Barram to identify 5 occasions (from the 46 recorded 'Use of Force' incidents) where Rolfe had used force that Barram assessed as not '*reasonable, necessary, proportionate and appropriate*'.

⁵¹ This contingent of Police Officers included a Tactical Response Group member from Darwin

⁵² Later to be renamed the 'Immediate Response Team'.

⁵³ PROMIS 8139519 'Use of Force' comments submitted by Senior Sergeant Mike Williams (since resigned).

⁵⁴ PROMIS 8139519 'Use of Force' comments of Superintendent Bradley Currie.

1. PROMIS 8111295 – Constable Rolfe chased and tackled a person involved in a disturbance in a public place. The person received a shoulder injury (written off as a pre-existing injury) and minor lacerations. Rolfe did not engage his Body Worn Video (BWV). Superintendent 'Use of Force' review comments '*UOF reviewed – No further Action required*'.
2. PROMIS 8391540 – Constable Rolfe attended a domestic disturbance in Alice Springs. He again did not activate his BWV. The alleged offender's step-father was assaulted by Rolfe (with Rolfe alleging the step father attempted to eye gouge him). Step father was punched repeatedly by Rolfe and later conveyed to Alice Springs Hospital (ASH) for treatment to facial lacerations. Senior Sergeant 'Use of Force' review comments '*The subject has been charged with offences of assaulting police and the matter is now before the courts – Nil issues arising*'.

When the matter proceeded through court the Judge, Greg Borchers' stated;

'I find that Constable Rolfe's evidence lacks credibility. He lied. He has lied in a statutory declaration about what happened in the bedroom.....it is highly likely that he was unconscious when Rolfe punched him in the face.....Rolfe deliberately banged his head into the floor as he was being turned over to be handcuffed.'

3. PROMIS 8886461 – Constable Rolfe attended a disturbance between 2 elderly intoxicated males at Araluen Park. Rolfe pushed one male to the ground with unnecessary force. Incident captured on BWV. Despite the person being conveyed to ASH the matter was reviewed by Supervisor with a 'Use of Force' comment '*Completed – No immediate issues noted*'.
4. PROMIS 9087054 – Constable Rolfe again pursued a male who ran from him. BWV shows a lengthy chase before the male appears to surrender. Rolfe uses obvious force to push the male into a fence. The person was later deemed to not have committed any offence and was conveyed to ASH for treatment (recorded as breathing difficulties). Supervisor 'Use of Force' review comments '*Constable Rolfe. Force used was proportionate, reasonable and necessary in the circumstances. Nil issues identified*'.
5. PROMIS 9103041 – Constable Rolfe intervened in a dispute at the Alice Springs Town Council lawns pushing a male with force into the Council building. The degree of force used caused the male to suffer a large laceration to his head that required treatment at the ASH. The incident was captured on BWV. Supervisor 'Use of Force' review comments '*Task complete*'.

The lack of any detailed review by the supervisors of Rolfe during these 'Use of Force' episodes is concerning. As summarised by Rolfe's partner at the time;

CAMPAGNARO: *I think he just, um, felt like he could do whatever he wanted because the Senior Sergeants were always going to cover it up for him. So use of force, um, well yeah, I think he just felt like he could just use unjustified force all the time because it was always going to be covered up.*

Of further concern all of these matters should have had a mandatory 'Custody and Illness Injury Report' (Ciir) submitted on the PROMIS Case by the senior attending

member. Only PROMIS 8391540 had a CiiR submitted in addition to the Use of Force report. A CiiR is required when a person receives an injury or receives medical treatment while in custody in accordance with the General Order – *Custody and Transport*. Once submitted the CiiR is subject to review by the Divisional Superintendent to ensure the member/s acted appropriately and in accordance with training, education and policy. It would have been more than likely that Rolfe's actions and behaviours would have been suitably addressed at an early stage had these PROMIS involvements had an accompanying CiiR. This oversight to submit CiiR's was a failure of the workplace supervisors (Sergeant/Senior Sergeants) who reviewed and finalised the PROMIS Case/s where Rolfe clearly used questionable if not excessive force.

Further evidence of Rolfe's behavioural concerns comes from the information provided in the statutory declaration of Detective Superintendent Virginia Read, Ethics and Integrity Division, Professional Standards Command. In her capacity she managed the 'Complaints Against Police' reports and noted that Rolfe was repeatedly engaging in concerning behaviour, including not operating his BWV. She had cause to meet or otherwise discuss issues pertaining to Rolfe's alleged inappropriate behaviours with the Alice Springs 'Command Management Team' (CMT) on at least 3 occasions. She noted Constable Rolfe's non-adherence to the existing BWV policy and his failure to activate his BWV during 'use of force' episodes. No record of any action taken by the Alice Springs supervisors is recorded in the minutes of the Alice Springs Command Management Team meetings held in June, July or October 2019 when these issues were directly raised by Detective Superintendent Read.

Following the death of Walker at Yuendumu on 9 November 2019 the IRT members immediately turned off their cameras once it was mentioned investigators from Alice Springs were making their way to Yuendumu.

The hypervigilance exhibited by Constable Rolfe should have triggered a managerial response however the Northern Territory Police at present do not have an 'Early Intervention System' in place for officers identified as engaging in discerning behaviours. In spite of the case management system currently utilised by the Police Standards Command, IAPro, having this capability it is not utilised for this purpose. Had such a program been in place it would clearly identified Rolfe's 'use of force' involvements as 'high' and appropriate intervention tools could and should have been put in place.

The NTPF policy Instruction (Version 1.4) - '*Operational Safety and Use of Force*' provides the rationale for the recording of 'Use of Force' involvements as follows;

- **Use of force reporting**
-
- 22. *Recording nationally comparable information at jurisdictional level is to allow for the adoption of a strategic approach to the identification of national trends and models of best practice on use of force.*
- 23. *The NTPF maintains a system that stores information on all incidents where force was used by or against members to:*
 - 23.1 *identify training needs for operational safety purposes;*
 -
 - 23.2 *monitor the effectiveness of operational training, tactics, procedures and equipment to ensure appropriate behaviour; and*
 -

- 23.3 monitor use of force trends in the best interests of the public and operational members.
- 24. As part of the process of monitoring and evaluating the use of force, police organisations should maintain governance structures to enable the collection of information regarding circumstances where force has been used. The value of reporting, recording, monitoring and evaluating use of force applications includes:
 - 24.1 provision of a profile on the means adopted by members to resolve violent or potentially violent incidents including critical, physical and low risk incidents;
 - 24.2 ability to examine police conduct in conflict situations to assist in identifying any weaknesses, strengths or risk areas and recommend improved practices; and
 - 24.3 collection and examination of relevant factors including behavioural, cultural and demographic profiles of offenders.

This, however, does not seem to be the case with the 'use of force' submissions completed on PROMIS not monitored or evaluated on a strategic, tactical or operational level. There is no specific governance structure (other than what information can be recovered from PROMIS) that enables 'use of force' submissions to be monitored or evaluated as suggested in paragraph 24 of the Instruction.

The OST Unit do not review all 'use of force' submissions as suggested in paragraphs 23.2 & 23.3 of the Instruction. This is, in part, due to not having the physical capability to do so.

"Use of Force" statistics are not published in the NTPFES Annual Report.

Recommendation – That the Northern Territory Police put in place an 'Early Intervention System' to assist in identifying and correcting inappropriate workplace behaviour.

Commissioner's Confidence

Throughout the investigation into the Operation Charwell Criminal and Coronial cases there was evidence of police engaging in unacceptable behaviours to the detriment of the Northern Territory Police Force. Some of these behaviours alone would not warrant disciplinary action under s 79, Part IV, *Police Administration Act 1978* (NT) but fall well short of the expectations and Oath taken by all police upon appointment to the rank of Constable.

Examples of poor behaviour included police officers refusing to make statements, declining to provide specific detail in statements, openly criticising decisions made by superior officers and engaging in behaviour that potentially undermines police and legal processes (thereby leading to the potential to bring the police force into disrepute).

Correcting such behaviour is a cultural challenge to all police forces around Australia who do not have the option of the Commissioner exercising his discretion through 'loss of confidence' powers. The arrest of any police officer is always likely to draw adverse comment and create the potential for dissent amongst other disaffected police officers, as was the case of Constable Rolfe, but the expectation of the Community and the Commissioner is that the legal process will proceed with the full co-operation of other sworn police officers in the investigation regardless of their status within the Police Force.

In the High Court matter in the Police Service Board of *Victoria v Morris* it was reported;

*"The effectiveness of the police in protecting the community rests heavily upon the community's confidence in the integrity of the members of the police force, upon their assiduous performance of duty and upon the judicious exercise of their powers...."*⁵⁵

This was further enforced in the matter of *Reid-Frost v Commissioner*, where Bolam J said;

*The Police Commissioner should not be obliged to continue to accommodate an officer who resists authority, is unable to accept advice or criticism without resorting to an exaggerated emotional response, is disruptive in the workplace and is not able to attain consistently a reasonable standard of performance."*⁵⁶

With Part IV of the Police Administration Act 1978 currently under review it would be the opportune time to ensure the Commissioner obtains the privilege of loss of confidence powers in line with community expectation and aimed at enhancing integrity within the Northern Territory Police Force.

Recommendation – That the Commissioner's confidence provisions be considered as part of a future disciplinary reform process.

Mandatory Drug and Alcohol Testing for Police

In the early stages of the investigation into the shooting death of Walker the Acting Deputy Commissioner, Dr Narelle Beer, asked a pertinent question – Do (Northern Territory) Police have the power to obtain a blood sample from Constable Rolfe?

Her experience in Victorian Police told her that this was a mandatory requirement in that jurisdiction but she was quickly informed that there was no such power in existence to do so in the Northern Territory.

⁵⁵ Police Service Board (Victoria) v Morris (1985) 156 CLR 397 at 412

⁵⁶ Reid-Frost and Commissioner of Police (No 2)[2020]NSWIRComm 86, para. 12

At the point of time when Rolfe shot and killed Walker there was no reason to suspect that he was under the influence of drugs or alcohol but, without specific legislative powers, there was no capability to do so.⁵⁷

I [REDACTED]
P [REDACTED]
a [REDACTED]
2 [REDACTED]

F [REDACTED]
r [REDACTED]
a [REDACTED]

I [REDACTED]
F [REDACTED]

[REDACTED]
C [REDACTED]
I [REDACTED]
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[REDACTED]
a [REDACTED]
I [REDACTED]
[REDACTED]
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I [REDACTED]
I [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁷ Rolfe was not asked by the initial investigation team to volunteer either a sample of breath or submit to a blood test.

[REDACTED]

[REDACTED]

[REDACTED]

Recruitment of ex-ADF members into NTPOL

The Coronial Investigation exposed flaws in the recruitment process and integrity checks currently conducted by NTPOL.

In particular the recruitment of Zachary Rolfe into the NTPOL highlighted issues around the lack of probity checks for persons aspiring to become a police officer. In all cases where the applicant has identified integrity issues (either admitted in their written application or disclosed at interview) the recruitment of that person is usually referred to the Police Integrity Committee for a determination as to their eligibility to join the NTPOL. The recruitment of Zachary Rolfe highlighted an issue when applicants fail to disclose an adverse workplace history. Recruitment staff currently have a limited ability to identify integrity issues that otherwise would impact on persons being recruited into the NTPOL.

Zachary Rolfe initially provided false information on his written application to join the Northern Territory Police. He indicated that he had not applied to join any other Police Force (completing his NTPOL application the day after applying to join the Queensland Police Force). He did not initially disclose an incident in which he was involved in at Townsville where he was fined by Queensland Police. Further he did not self-disclose his adverse military history – a mandatory requirement in the application form for ex-ADF members. In doing so Rolfe was selected for a face to face interview with the recruiting panel. Had he completed his application form in all honesty it would have unlikely that he would have been selected for interview.⁵⁸

During interview Rolfe conceded that he had applied for other policing jurisdictions (QPOL had rejected his application by that time) and mentioned the incident in Townsville. The recruiting staff assessed him as

'...well presented and confident during interview. Was forthcoming and honest throughout...'⁵⁹

Rolfe was not entirely forthcoming during interview failing to disclose his adverse military history, which including a charge of stealing (dishonesty) while serving in the ADF. Had

⁵⁸ Following his failure to disclose the incident in Townsville to the Queensland Police he was prohibited for 10 years from re-applying in that jurisdiction

⁵⁹ Interview Panel Recommendation – Bruce Van Haeften (NTPOL Psychologist) – Applicant Zachary Rolfe

he disclosed this matter his application would have been referred to the NTPOL Integrity Committee who would have in all likelihood rejected his application.

The Northern Territory Police Recruit Constable Information Booklet provides specific advice to prospective police applicants regarding their background;

Applicants who are currently excluded from applying to other policing jurisdictions will have their applications and reasons for exclusion reviewed by the Superintendent with responsibility for recruitment for a determination as to whether the applicant proceed to testing or be referred to the Integrity Panel.

Applicants must make full disclosure in their application including all criminal and civil proceedings, all spent convictions, all traffic offences including traffic tickets and court appearances, all juvenile offences including police cautions, all Domestic Violence Order History and any bankruptcy proceedings.

If an applicant declares any of these matters their application may be taken before the Integrity Committee. Applicants will be advised and given the opportunity to provide a written response to the Integrity Committee. The Integrity Committee will make a determination about the applicants suitability to proceed in line with the Integrity Guidelines as detailed in the information booklet.

If an applicant fails to declare or disclose any matters, their application will be taken before the Integrity Committee and it will be assumed that the failure to disclose was deliberate, unless the applicant can prove otherwise. Applicants who fail to disclose are likely to be permanently excluded from applying to the Northern Territory Police Force.

It is an offence of False Representation under s154 Police Administration Act 1978 for a person to knowingly make a false representation in connection with an application for appointment to the Police Force. Despite Zachary Rolfe appearing to do so the Commissioner of Police has elected not to prosecute. The decision was based on the advice received from the Department of Public Prosecutions indicating there was insufficient evidence to proceed and it was not in the public interest to do so⁶⁰.

Since it was discovered that Rolfe did not disclose his adverse military disciplinary history the Northern Territory Police have tightened recruitment processes and probity checks for ex-ADF members. If they had done so prior to Rolfe applying for the NTPOL it is likely he would never have been recruited into the NTPOL.

Investigation – Standardising 5 existing NTPOL Instructions around investigations

When Walker was shot and killed there were 5 NTPOL policies that guided the investigative response;

1. General Order - Investigation Management Guidelines

⁶⁰ Statutory Declaration of Assistant Commissioner Michael White, Para 36, p4.

These 'guidelines' were due to be reviewed and updated by 15 January 2015 with 'ownership' of the General Order resting with the Commander Crime. The guidelines establish investigative responsibility for all crime types. In accordance with the guidelines a 'Death In Custody' investigation is determined by the Deputy Commissioner with Professional Standards Command oversight⁶¹. This General Order is aligned to the 'Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public' and remains current with the exception of determining which Deputy Commissioner is responsible for allocating a 'Death In Custody' investigation.

2. General Order – *Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public*

This General Order was due to be reviewed by 9 November 2012 (It was partially amended on 8 September 2016 to reflect the 'Structure Realignment that occurred at that time) with the responsible owner of the policy being the Commander Crime. The responsibilities of rank mentioned in this General Order is now out of date.

The General Order only allows for one 'Commissioned Officer In Charge' when in this case 2 Commissioned Officers In Charge were appointed – one managing the coronial response and the other the investigative response. This made determining the priorities of the investigation difficult at times with the criminal investigation having primacy over the coronial investigation. It is accepted that in the case of Walker this was a unique circumstance but it should be factored into the General Order should a similar event arise in future.

The General Order does not contain directions to investigators in regard to some of the recommendations previously made the Coroner. The issues pertaining to these recommendations were again relevant to the Walker investigation. The 'Risk and Audit' management team are responsible for the oversight of coronial recommendations and ensuring that the relevant owner of the General Orders update the policy in a timely manner. This clearly has not been occurring on all occasions.

3. General Order – *Coronial Investigations and Inquests*

This General Order was due to be reviewed by 4 December 2017 and the Commander Crime is responsible for this General Order.

There were issues with compliance with part of the General Order during the investigation as the investigation was 'locked down' and the issues arising during the investigation were not shared with either the Divisional Superintendent (Superintendent Nobbs) responsible for the management of the remote stations or even the Assistant Commissioner responsible for Southern Command (Dr Narelle Beer). The initial IMC (later to become the Joint Management Committee – JMC - did not share information with the IMT. Given the investigation was protracted the sharing of critical information and the requirement for urgent remedial action, as stipulated by this General Order, did not occur in a timely manner.

⁶¹ There are now 2 Deputy Commissioners – one responsible for 'Territory Operations and Road Safety' and the other responsible for 'People, Crime and Capability'.

The General Order only requires minor updates to naming conventions.

4. Instruction - *Major Crime, Major Investigation and Critical Incident Response*

This policy instruction replaced the Major Crime Plan on 15 November 2018. The policy owner is listed as the Commander Crime and is not due for review until 15 November 2021.

The policy has no definition of what constitutes a 'Critical Incident'. The naming conventions do not align with other policies and assigned roles and structure became confused during the Walker criminal investigation as the response to the death of Walker adopted protocols under both the *Major Crime, Major Investigation and Critical Incident Response* and the *Northern Territory Incident Control System* (NTCIR) framework. Each mandate a response to a 'critical incident' (including a major crime response). Each have a different nomenclature for roles assumed during a response to a critical incident. In addition to this confusion the 'Investigation Management Committee' and the 'Incident Management Team' titles were added into the management response to Walker investigation.

Under the NTCIR the structured response for investigators is provided in Chapter 7 – '*The Investigation Function*'. PROMIS is to be utilised as the Case Management System with roles established under the *Major Crime Plan* (now defunct).

The Instruction - *Major Crime, Major Investigation and Critical Incident Response* does not specifically state what case management system is to be utilised but states;

All documents or materials relating to a DI are to be collected, filed and managed in accordance with the relevant case management system. If alternative recording is required i.e. outside of the standard case management system, the JMC is to make this determination. There is to be the one (1) source of truth for all collected information, evidence and data⁶².

Throughout the Operation Charwell investigation information was recorded both on the PROMIS Case Management System and the 'L Drive' shared file by the Operation Charwell investigation team. The 'L Drive' is not regarded as an appropriate case management system as it can be easily edited and has a limited audit function.

As PROMIS is now due to be replaced commencing from 2021 it is recommended that the PROMIS replacement, SerPRO, develop a secure case management system.

Standardised naming conventions and definitions are also required within these General Orders/Instructions to ensure there is no confusion regarding roles and responsibilities in response to a major/critical incident.

5. Tri-service – *Northern Territory Incident Control System*

Following the death of Walker the Commissioner of Police released a broadcast on 11 December 2019;

⁶² Paragraph 109 – Instruction – *Major Crime, Major Investigation and Critical Incident Response*

When responding to a critical incident or when planning any type of police led operation Northern Territory Police members will utilise the Northern Territory Incident Control System (NTICS).

The NTICS is currently outdated and is to be replaced by the Incident Command and Control System + (ICCS+) at a future date⁶³. Consideration is required in order to transition the overarching ICCS+ to synchronise with existing local investigation policies. The current case management system used by police, PROMIS, is scheduled to be replaced by SerPRO in a roll-out commencing from 2021.⁶⁴ The NTICS case management system 'WebEOC' is regarded as an unsuitable case management system primarily for security reasons.

Investigation - Recording of Critical Decisions

The requirement to record 'critical decisions' is contained in the NTPOL – Instruction – *Major Crime, Major Investigation and Critical Incident Response*. This instruction was recently updated and released to members on 15 November 2018⁶⁵.

The Coroner has previously criticised police for their failure to record 'critical decisions' in major investigations⁶⁶. To ensure critical decisions are recorded in a manner consistent with the proper conduct of an investigation and in line with the Coroner's expectations the Instruction provides clear direction to members;

One of the most important aspects of the management of any investigation is the systematic recording of decisions made for the advancement of that investigation.

Detailed recording of all critical decisions including the rationale is to be maintained on the investigation Critical Decision Log.

Only 2 'Critical Decisions' were recorded on the Investigation Log in PROMIS.

These two decisions were made on 10 November 2019. No other critical decisions were recorded in the investigation log for the duration of the investigation. Part of these critical decisions related to the closure of the crime scene with the second critical decision contradicting the first critical decision.

A Case Note Entry was submitted on 20 November 2019 by Senior Sergeant Grieve, Major Crime Section;

GRIEVE reports the below is required to provide an accurate record of investigative decisions pursuant to decision making structure:

- 1. Identify times, dates and make up of Crime Investigation Management Committee (IMC) meetings.*

⁶³ NTICS last updated July 2011.

⁶⁴ Northern Command (Katherine and district stations) will be the first to trial SerPRO.

⁶⁵ Northern Territory Police Gazette (N96/G23/15 Nov 2018)

⁶⁶ Paragraph.80 - Inquest into the Death of Kieffen Raggett [2011] NTMC 011

2. Obtain a list of Critical Decisions made by the IMC during meetings held.
3. Obtain minutes (sic) of such meeting and/or sufficient detail to allow for accurate representation of same.

In response to the concerns raised the Senior Investigator In Charge of Operation Charwell responded through his proxy;

10/02/2020 Morrissey reports in conversation with Pennuto and Newell this information not required for the criminal investigation. Follow up to be finalised.

Clearly the Instruction relating to the recording of 'Critical Decisions' was ignored.

On review this appeared to be the case throughout the investigation with many critical decisions recorded in various notes and meetings but not recorded in accordance with policy. Even the author of the Instruction relating to the recording of critical decisions did not follow the policy;

We established the use of WebEOC as the primary records management and information sharing platform for the ongoing operational response to this incident. Staff within the POC were tasked to establish WebEOC (Sergeant Jason Rothe) and maintain all records and decisions within the system moving forward.⁶⁷

A review of the entries in WebEOC do not support the claim that initial critical decisions were recorded in this platform.

In response to the death of Walker an Investigations Management Committee (IMC) was constituted. Some of the critical decisions emanating from the first IMC meeting held at 1700 hours, Sunday 10 November 2019, were logged in PROMIS however not in a format that allows for examination as to exactly who made the decision and the rationale behind the decision⁶⁸. Of note, one of the entries logged as a 'critical decision' notes;

'No Coroner's Authority to be enacted'

It was unable to be determined exactly who made that decision or in what context it was made. The meeting was neither audio recorded or minuted by any of the persons present. The format and structure of an IMC during a response to a declared critical incident has no precedence in the NTPOL⁶⁹. The Instruction – *Major Crime, Major Investigation and Critical Incident Response* mandates the requirement for a Joint Management Committee (JMC) to oversee an investigative response but makes no mention of the requirement for any type of IMC intervention⁷⁰.

There were at least 3 further IMC meetings that again were not recorded or minuted. Any critical decisions decided during those meetings are contained to notes from the

⁶⁷ Paragraph 55 – Statement of Commander Travis Wurst, Police Operations Commander, Operation Charwell.

⁶⁸ The 'Critical Decision' to refer the matter to the DPP on Monday 11 November 2019 was not recorded.

⁶⁹ Commander Dole stated there was confusion around the naming conventions of the meeting due to Assistant Commissioner Anticich being new to the jurisdiction – Statutory Declaration – Commander Martin Dole – Para.8, Page 3.

⁷⁰ A JMC is required within 24 hours of a Major Crime/Critical Incident being declared.

few members who elected to record details of those meetings. It was not until 22 November 2019 that a JMC was established. All minutes emanating from those minutes were documented however any critical decision made were not recorded on the PROMIS Investigative Case Log.

During the first IMC meeting it was reported

'AC Anticich provided a direction at this initial meeting that all Decisions emanating from the IMT (sic) were to be recorded for the purpose of uploading to the PROMIS job'⁷¹

Clearly this did not occur.

In summary the recording of critical decisions, of which there were many, was ad-hoc and not in adherence with the Instruction – *Major Crime, Major Investigation and Critical Incident Response*.

It is recommended in future that all IMC/JMC meetings for a declared 'Major Crime/Critical Incident be recorded and critical decisions logged as prescribed by the Instruction – *Major Crime, Major Investigation and Critical Incident Response*.

Section 208E Criminal Code Act NT – 'Law Enforcement Officers'

It was 17 years since the last fatal shooting of a member of the public by a Northern Territory Police Officer⁷².

Since the introduction of the Northern Territory *Criminal Code Act* in 1983 Police Officers have always been instructed that an offence is committed unless 'authorised, justified or excused' under the Defence provisions of the *Criminal Code Act* 1983.

In 2006 Section 208E – 'Law Enforcement Officers' - was introduced into the *Criminal Code Act* 1983 as part of the *Criminal Reform Amendment Act* (No2) 2006.

In 2014 Senior Constable Marcus Tilbrook, Remote Policing Command, wrote to his superiors in a memorandum highlighting the introduction of Section 208E - *Criminal Code Act* 1983 – Law Enforcement Officers. He wrote the memorandum in response to what he perceived as outdated teachings provided by Operational Safety Section. He reported as follows;

- **Replacing Part II Criminal Responsibility with Part IIAA**

Currently the Operational Safety Section still uses the Criminal Code Act, Part II Criminal Responsibility, Division 3 - Justification, in the training of police officers when considering the use of force in relation to firearms training. The three

⁷¹ Statutory Declaration of Commander Martin Dole – Para 9, P.3

⁷² Robert Jongmin was shot and killed by police at Wadeye on 23 October 2002.

sections within this Division are:

s. 27 *Circumstances in which force not being such force as is likely to cause death or serious harm is justified,*

s. 28 *Circumstances in which force causing death or serious harm is justified*

...

(e) in the case of a police officer, or a person acting by his authority, when attempting to prevent a person committing or continuing the commission of an offence of such a nature as to cause the person using the force reasonable apprehension that death or serious harm to another will result;

...

and

s. 29 *Defensive conduct justified.*

This is the law, effectively, as it has been taught to NT Police officers since the Criminal Code Act came into effect in the NT on 1 Jan 1984.

Since the Criminal Code Act was amended in 2006 to introduce Part IIAA Criminal Responsibility, the defences that relate to what are now Schedule 1 offences (including murder, manslaughter, reckless endangerment and the like) are now contained in the new Part IIAA.

Section 43AA - Application of Part - provides, amongst other things that;

(3) The following provisions of this Code do not apply in relation to Schedule 1 offences, or declared offences, committed on or after the commencement of this Part:

(a) Part II (Criminal Responsibility);

...

Given that Division 3 - Justification is within Part II (Criminal Responsibility), it would appear - on the face of it - that someone charged with murder, manslaughter or reckless endangerment (a police officer who shot someone in the course of their duty, for example) could not rely on s. 28 (e) above.

It is likely that Section 208E replaces Part II in this instance. It provides that:

208E Law Enforcement Officers

A person is not criminally responsible for an offence against this Part [Part IV Offences against the person and related matters] if:

(a) the person is, at the time of the offence, a public officer acting in the course of his or her duty as a police officer, prison officer or other law enforcement officer; and

(b) the conduct of the person is reasonable in the circumstances for performing that duty.

It is not likely that the current situation will affect any officers' decision in any shoot/don't shoot situation, as both versions of the Code's Criminal Responsibility provisions are based on the common law and it is those principles that are emphasised. However, there is the potential for the embarrassment for any charged individual and for the NTPF in any coronial investigation when members' training is examined. The last shooting death by a police officer was of Robert Jongmin at Wadeye in 2002 – before the introduction of Part IIAA.

In October 2014 the facilitators guide, 'Introduction to the Criminal Code –

Session 2 – *Criminal Responsibility* - utilised for the training of recruits was updated with an inclusion of Section 208E *Criminal Code Act* 1983. There was no evidence that this update was passed on through instruction to students/recruits⁷³.

— Check Training Records.

After the shooting death of Walker it was apparent that there was little to no knowledge of this critical component of legislation amongst Northern Territory Police Officers, including those charged with the responsibility to investigate the death of Walker.

The statement of the NTPOL 'Use of Force expert', Detective Senior Sergeant Andrew Barram states (incorrectly) in the Rolfe case;

'Legal justification for police to resort to the use of firearms is provided under the Criminal Code Act 1983 at Section 28 Circumstances in which force causing death or serious harm is justified, and Section 29 Defensive Conduct Justified.'

Detective Senior Sergeant Barram makes no mention of, or reference to, Section 208E – *Criminal Code Act* 1983 – '*Law Enforcement Officers*' – in any of the 5 statements he provided. Additionally some of the reference materials he has annexed to his statements are archaic and have been replaced⁷⁴. Given his role and responsibility as the (former) Officer In Charge of Operational Safety and Tactics Training (OSTT) this is remarkable. The facilitator guide '*Firearms and Tactics – Recruit 10 Days Skills Block*' does not reference Section 208E – *Criminal Code Act* 1983 - when providing basic instruction around '*Legislation applicable to the Use (or Non-Use) of Firearms*'. Of concern is that since the introduction of Section 208E in 2006 all police, including Constable Zachary Rolfe and his fellow recruits, did not receive any contemporary training regarding this important piece of legislation specifically relating to law enforcement officers. This is in contravention to what is mandated in the Australia, New Zealand Police Advisory Agency (ANZPAA) Use of Force (UOF) principles⁷⁵.

To be careful check statements and training records.

ANZPAA UOF Principle 1 states;

The authority to use force is derived from the law. Individual police are accountable and responsible for their use of force and must be able to justify their actions at law.

11. Police are authorised or justified to use force in a wide variety of circumstances, however, their use of force must have a lawful foundation and must be in the pursuit of a lawful objective.

⁷³ There is no specific instructional material around Section 208E *Criminal Code Act* 1983 beyond the legislation itself and recruits are not subject to any examination questions pertaining to this legislation.

⁷⁴ Statement 1- Review of Tactics and Force – Detective Senior Sergeant Andrew Barram – Annexure C '*National Minimum Guidelines for Incident Management, Conflict Resolution and Use of Force, NPRU report 132.1*' and Annexure D – '*National Guidelines Compendium: Police Use of Lethal Force, Deployment of Police in High Risk Situations, Deployment of Police Negotiators, NPRU Report 123*'

⁷⁵ These were the ANZPAA UOF principles in place when Constable Zachary Rolfe undertook basic training with the NTPOL.

12. *The use of force by police raises fundamental human rights issues. Allegations regarding improper use of force undermine the legitimacy of police and, therefore, undermine public confidence and respect for police.*

13. *Police must comprehensively understand the situations and circumstances in which they can use force, and the legal foundation of their use of force. They must also be able to justify these actions at law.*

There was no evidence that suggested Constable Zachary Rolfe (and his fellow recruits) received any comprehensive training around section 208E Criminal Code Act 1983. It is not mentioned in the 'Firearms and Tactics – Recruit 10 day skills block' – 'Facilitator Guide' – in force when Rolfe undertook his NTPOL recruit training. The training instead was limited to police 'use of force' exemptions contained in Sections 27, 28 & 29 of the *Criminal Code Act 1983*.

At the time of Walker's death there was no judicial precedent offering an interpretation of Section 208E *Criminal Code Act 1983*⁷⁶. However, in her findings handed down on 20 March 2020 in the matter *Andreas Andreou – v – Raymond Neilson-Scott* [2020] NTLC 04 Judge E. Armitage provided her opinion as to what type of conduct of a Police Officer may be construed as "reasonable in the circumstances for performing that duty".

Her judgement is vastly different to any interpretation by police officers regarding 'use of force' as 'justified'.

Judge Armitage concluded in her findings that 'reasonable' circumstances might include a consideration of:

- (i) the urgency of the situation;
- (ii) whether or not weapons are involved, and the nature and location of those weapons;
- (iii) whether any person(s) is armed;
- (iv) whether there is a risk to life of any person (including the police officer);
- (v) whether or not the police officer is outnumbered;
- (vi) whether or not the police officer has back-up (and how far away it might be);
- (vii) whether or not the police officer has access to relevant information (e.g. police communications, or relevant databases via use of an iPad)
- (viii) the substance of any information, intelligence or history on the person or location;
- (ix) whether any person(s) is intoxicated or affected by illegal drugs;
- (x) whether any person(s) is affected by mental health or physical health issues;
- (xi) the apparent age, strength, or frailty of person(s) with whom the police are dealing;
- (xii) whether children are present;

⁷⁶ Stephen Gray, Barrister and Law Lecturer at Monash University, wrote a Citation Paper 'You Can't Charge Me, I'm A Cop: Should Police, Corrections Staff and Law Enforcement Officer Be Immune From Criminal Liability For Actions Carried Out Against Vulnerable People In The Course Of Their Duties?' S.208E Criminal Code 1983 NT is specifically discussed and the author argues for the abolition of various statutes, including S208E Criminal Code 1983, that provide police with immunity from criminal prosecution for actions carried out in the course of their duties.

check Recruits

- (xiii) whether or not the person(s) is co-operating and any known history of compliance or non-compliance;
- (xiv) whether there is a risk of further offending;
- (xv) whether or not the person(s) has a residence;
- (xvi) whether or not there are court orders or bail conditions;
- (xvii) any reported information about the incident;
- (xviii) a general risk assessment; and
- (xix) a police officer's training and experience.

Judge Armitage highlighted that this is not an exhaustive list.

Unfortunately this judgement was not available to investigators at the time of Walker's death. Accordingly the investigators focussed on obtaining expert evidence centred around the analysis of the BWV of Rolfe rather than taking a broader objective approach looking at identifying behaviours that constituted an action that may be construed as (s.208E *Criminal Code Act 1983*) '*reasonable in the circumstances*'.⁷⁷

In considering whether a coronial recommendation is required to direct the PFES College to review their recruit training materials so as to ensure they remain current is already a requirement under their obligations as an accredited Registered Training Organisation (RTO). As such a recommendation is not required. It seems apparent that the 'Use of force' theoretical training provided to Constable Zachary Rolfe during his recruit training was, at times, quite tardy and not in line with contemporary legislation.

It is however recommended that the Northern Territory Police Force review their protocols for the release of legislative reform of specific relevance to their members. Communication and education around the introduction of new/amended legislation remains fundamental to all operational police members.

Militarisation of Northern Territory Police

Between January 2010 and May 2020 the Northern Territory Police recruited 718 members. 192 recruits had ex-military (Australian Defence Force) experience i.e. 26.74% of police. This is a vast over-representation of former military members recruited to police the Northern Territory who do not proportionally represent the populace of the community they serve. Recruiting ex-ADF members provides a certain desirable skillset for policing but does necessarily provide a neutral and objective core of membership who are representative of their community with the requisite level of high integrity.

In more recent years the NTPOL has acquired military grade weapons, equipment and uniforms that are not in line with the expectations of community based policing philosophies. In part terrorist activity around Australia has grown and have compelled police to upgrade weaponry and tactics in line with the expectation to deal with such behaviour.

⁷⁷ 'If a person is a Police...Officer...acting 'in the course of' their duties, all that is necessary is that the person's conduct be 'reasonable in the circumstances for performing that duty', an objective test': Stephen Gray - 'You Can't Charge me, I'm a Cop: Should Police, Corrections Staff and Law Enforcement Officers Be Immune From Criminal Liability For Actions Carried Out Against Vulnerable People In The Course Of Their Duties' - UNSW Law Journal Volume 41(3) P.6

The transition of the Alice Springs Police 'Cordon and Containment Team' into the 'Immediate Response Team' in 2017 was more than a name change. The IRT adopted a para-military role focussing on weapons training and tactics involving 'green roles' (tactical observations in remote areas) and 'black roles' (tactical entry into strongholds – house clearing)⁷⁸. Previously the Cordon and Containment Team focussed on the ICENCIRE principles. The IRT did not train or deploy with negotiation in mind but rather adopted a mission orientated 'warrior mentality'. This was driven in part by the IRT team leaders, both of whom came from a Tactical Response Group (TRG) background.

The deployment of the IRT into Yuendumu armed with military type weaponry was an extreme response in the circumstances, particularly when they had been given the specific instruction to wear their regular uniform. They did not consider taking a trained negotiator with them as part of their plan to arrest Walker.

Carrying exposed weapons in a remote community without justification was a classic military type response to a possible enemy threat. In ordinary policing circumstances a drawn firearm requires a member to submit 'use of force' documentation under existing policy which may then be subject to further review by the Professional Standards Command (PSC). (However there appears to be an anomaly in policy where a member can carry an exposed 'long-arm' weapon in a community environment without any requirement to justify their action).

In the case of Walker one of the IRT members openly carried an AR15 rifle around the community prior to locating Walker. When one of the Yuendumu residents, Leanne Oldfield, challenged the IRT members she received the following reply;

- - *OLDFIELD: Yeah, I'm just figuring out why you have a gun.*
 -
 - *EBERL: Why we have a gun?*
 -
 - *OLDFIELD: No, why he's got a gun.*
 -
 - *EBERL: Oh, yeah, we all carry guns.*
 -
 - *OLDFIELD: Yeah, I know but he's like got it aimed to shoot someone.*
 -
 - *EBERL: No, he's not aiming to shoot anyone, is he?*
 -
 - *OLDFIELD: It's not right.*
 -
 - *EBERL: Hey.*
 -
 - *OLDFIELD: Stop it!*
 -

EBERL : We don't – we don't have a holster for that one so we have to carry it, so, someone probably shouldn't run at police with an axe, hey.

⁷⁸ Statutory Declaration of Lee Bauwens – 'Green Roles' & 'Black Roles' – P.19 - 22

There was no apparent justification for Police in Yuendumu to be carrying an exposed military type weapon at the time, particularly in an area where women and children had gathered. There was no immediate threat to either the member or any other person in the vicinity. All IRT members were carrying holstered weapons in any case.

The explanation provided by Constable Eberl;

'...Someone probably shouldn't run at police with an axe, hey'.

is an entirely inappropriate comment and suggestive of a retaliatory policing response to the events that occurred the preceding Wednesday (6 November 2019).

The policy relating to the carriage of weapons – *Instruction - Operational Safety and Use of Force* state the following;

- *Other than for the performance of the load or unload procedures, a member will not remove their Glock pistol from the holster unless circumstances dictate that it is a necessary safety precaution*

- *TRG and Technical and Covert Operation (TACO) members have specific training and operational requirements which require an exemption from the provisions relating to firearms carriage principles above.*

- Presently, IRT members have no policy exemption to openly carry exposed weapons without immediate threat. The militarised response, as demonstrated by the IRT members at Yuendumu on 9 November 2019, had no place in modern day Territory policing where usual resolution tactics and training were seemingly ignored⁷⁹. The induction and monthly training schedules of the IRT did not incorporate conflict resolution guidelines.

- ANZPAA have recognised the importance of conflict resolution training. As reported;

- *New conflict resolution guidelines follow finding that conflict resolution is under-trained in UK The College of Policing also released conflict resolution guidelines (guidelines) to coincide with the result of the National Police Safety Survey, which shows that only half of English and Welsh police (52%) felt their training has taught them how to defuse conflict. A quarter (26%) felt that not enough time was spent on essential communication. Over and above the need for deeper conflict resolution skills, the guidelines identify the need for strong supervisory support for members that have been assaulted, as well as for building an understanding of the factors that may escalate conflict. The guidelines also advocate for the development of an evidence base to ensure that trends in capability development and uses of force are both monitored. The underlying drivers for the guideline are consistent with findings from ANZPAA's use of force analysis undertaken at the request of the Board in late 2019, which saw the publication of the ANZPAA Use of Force Reference Guide. Use of force continues to be a priority area of focus for ANZPAA*

⁷⁹ ICENCIRE principles are the preferred method of resolution – see Statutory Declaration of Senior Sergeant Andrew Barram, P.7 - 9

The modern day police emphasis around weapons training needs to remain balanced with de-confliction training. Carrying a 'full kit' should include all available non-lethal options.

Failure to consider or conduct forensic testing on critical exhibits

The scissors used by Walker to stab Rolfe were examined by the Forensic Science Branch (FSB) with the end of the scissors tested positive for human blood. Only DNA testing was conducted on this blood – returning a DNA match for Walker, Rolfe and Eberl. There were no further tests conducted on the blood sample to establish the blood type that could have potentially identified the owner of this blood. According to the FSB it is now too late to do so.

Review:
— DNA testing
- Is blood required
- Is this a failure. 2

The police shirt of Constable Eberl worn during the arrest of Walker was seized when he returned to Alice Springs from Yuendumu. The shirt was sent to the Australian Federal Police (AFP) for forensic examination as it had a tear on the back that may have been caused during the arrest of Walker⁸⁰. During his second interview on Wednesday, 13 November 2019, Eberl raised an injury that he suspected may have been caused during the time he wrestled with Walker. The injury, a small scratch to his upper chest/inside shoulder region, appeared sufficient enough to expect that some bleeding would have occurred.

WOOD: *Um, did you receive any injuries?*

EBERL: *Not that I know of, but I would like to have a look at my shirt because I have a scratch here which could have been from the scissors, I don't know.*

WOOD: *Yeah.*

EBERL: *But I never – never mentioned it to anyone other than the other day, but um –*

WOOD: *Okay so where's that shirt now?*

EBERL: *Ah, you guys, well not you guys but someone seized it.*

WOOD: *Oh okay. Yep cool.*

EBERL: *Yep.*

CARTER: *Just on that Tash, and was – has someone photographed the scratch that you have? Is the scratch still there?*

EBERL: *No that's why I wanted to have a look at my shirt, to see if it was, yeah it's still there.*

CARTER: *Oh okay.*

⁸⁰ The examination request was to establish if this tear was consistent with being caused by a sharp edge weapon (scissors).

EBERL: Yeah.

WOOD: We might do that after⁸¹.

The investigators did not follow up on this lead.

A forensic examination on the inside of Eberl's shirt may have identified his blood and corroborated the timing of the injury. Unfortunately this was not considered prior to the shirt being sent interstate for forensic examination and no further forensic examination for blood will take place due to the shirt now being 'contaminated'.

Check.
Was shirt checked,
was blood tested?
What other tests on
shirt.
of fabric exam.

Investigative Bias

On Wednesday, 13 November 2019, the Director and Deputy Director gave interim advice to Assistant Commissioner Anticich, Commander Dole and Acting Superintendent Pennuto indicating that they believed Rolfe was 'prima facie' criminally liable for his actions and that they would support a charge of murder. Rolfe was arrested soon after⁸².

The evidence, as it stood at the time, was based around the Rolfe's BWV footage. Further corroborative evidence was required from 'use of force' experts in support of the 'prima facie' case against Rolfe.

NTPOL Detective Senior Sergeant Andrew Barram, who advocated that he was a 'Use of Force Expert', provided a statement indicating that he was of the opinion that;

'The firing of Shots 2 & 3 in rapid succession at WALKER was not justified because it was not reasonable, necessary, proportionate and appropriate in the circumstances having regard to the Force Philosophy'.

This statement played a pivotal role in the prosecution case against Constable Rolfe. Barram was acutely aware that Rolfe had been charged with murder and that his opinion would form a critical competent in support of the prosecution case.

In reaching a conclusion Barram referenced materials to his statement that were outdated. There was no challenge or peer review by investigators conducted on the statement of Barram. It was accepted as reliable without being subject to any scrutiny by investigators.

On 6 January 2020 Acting Superintendent Pennuto authored an e-mail to the Overall Investigator In Charge of the Operation Charwell. His email followed on from a conversation with advice Pennuto had received from the Deputy Director, D.P.P.

1. *An independent UOF SME review conducted by another Australian counterpart jurisdiction is very important for a number of reasons. Mr Nathan's view is that such a review will only be of meaningful value if conducted by a current*

⁸¹ Statement (2) of Adam Eberl, P.59

⁸² It remains unknown if S208E Criminal Code 1983 [NT] was considered as a defence available to Rolfe at this point in time.

practitioner whom has worked in a similar context, risen through the ranks and now reviews UOF whilst being actively involved in UOF policy / training within Australia. Mr Nathan is also of the view that an interstate review is necessary to support any work undertaken by D/S/Sgt Barram (regardless of the position he ultimately adopts at the end of his review). In short, Mr Nathan identified the challenges that the prosecution might face in the event that D/S/Sgt Barram is the only Australian SME and comes under hostile attack in any cross examination. Additionally, whilst there is no offense directed towards D/S/Sgt Barram his experiences in the area of fatal police shootings cannot compare with those of his contemporaries.

2. A very recently retired or departed Australian UOF SME. It is Mr Nathan's view that this is a less than perfect situation from a criminal prosecution perspective and can only have credibility if the prosecution can adequately demonstrate that training, tactics and policy have had no material changes since that SME concluded their policing career. I have canvassed both Forbutt and Barram in this regard to no avail. Enquiries may have to be made further afield across Australia.
3. An international expert. It is Mr Nathan's view that whilst such a person would be very informative in the Coronial setting, in the criminal court this is a large risk to the prosecution for a number of reasons. Amongst other things he cites an absence of context which he believes opens the expert up to cross examination around relevancy and being portrayed as an ivory tower academic (his words). As has been mentioned briefly in JMC briefings, in this regard I have already had introductory discussions with a Professor Geoffrey Alpert from the US. Alpert, who is also an Adjunct Professor in Australia (Griffith University) is an extensively experienced academic researcher whose entire career has been focussed on the police UOF field. Investigators have identified a number of key areas worthy of exploration by this gentleman but are mindful of the position of the DPP. Of note Alpert charges \$375 an hour for his services.

Clarify.
← Comments from DPP.
→ Interview Pennuto

The response received from Commander Dole was not what Pennuto expected;

'...at 2.36pm 7 January 2020 I spoke with A/Commander DOLE by telephone and was advised that he, A/A/C PROCTOR and A/D/C ANTICICH had met and discussed the UOF SME issue. I was neither aware to this point that they had met or intended to as I was expecting a JMC discussion. I was informed that during this meeting it had apparently been decided not to formally approach another Australian jurisdiction to provide a UOF SME and that a decision had been made to seek to formally engage international expert Professor Geoffrey ALPERT. I diarised/logged this decision in my official diary. I was informed that it was their view the Australian Police Federation comments had the potential to compromise the independence of any assessment provided by Australian officers (at least perceptually) because of their membership of the association / federation umbrella. I queried with A/Commander DOLE the DPP view and whether the discussion was something I should have been a part of. I was informed that the decision had already been made'

Despite a number of highly regarded police 'Use of Force' experts from within Australia being nominated to Pennuto no attempt was made to engage them due to public comments made by the Police Federation of Australia that they were supportive of Zachary Rolfe's behaviour. Instead a critical decision was made to engage an overseas expert, contrary to the advice of D.P.⁸³.

The overseas expert employed to provide his 'use of force' opinion, was Professor Geoffrey Alpert, an academic and highly regarded expert who had previously provided evidence at 'Death In Custody' Coronial Inquests in Queensland. Professor Alpert had never provided evidence in a criminal matter in Australia before.

Professor Alpert did not have the opportunity to travel to the Northern Territory to review the matter in person. Instead he relied on the investigation materials being sent to him by the Operation Charwell investigation team. This included Rolfe's BWV footage and statements from other police officers (witnesses) directly involved in the investigation. It was clear Professor Alpert did not have a clear appreciation on all facts⁸⁴. He was also not provided with all materials of relevance in reaching his opinion that Rolfe's use of force was exactly the same as what Barram had concluded, as not 'reasonable, necessary, proportionate and appropriate to the circumstances' or '...the minimum amount of force required for the safe and effective performance of their duties...'

As an example Alpert did not receive the third statement obtained from Constable Eberl. During this statement (interview) Eberl identified that he had received an injury consistent with having been possibly stabbed by Walker. Eberl had an obvious small incised wound to the inside of his left shoulder. For some extraordinary reason investigators did not question Eberl in any detail about when/how the injury occurred or even when he first noticed the injury. The police shirt he wore during the arrest of Walker was not subject to forensic examination for Eberl's blood on the inside of the shirt in the area where the injury was noted. Photographs were obtained of the injury but these were not forwarded to Professor Alpert nor was the third statement. Any suggestion that Walker had also stabbed Eberl at the time he was fatally shot by Rolfe was of critical importance to the possible defence raised by Rolfe (and later his prosecution team). It also supported Rolfe's statement to Eberl shortly after the third shot had been fired;

'He was stabbing me, he was stabbing me, it's all good, he's got scissors in his hand, he was stabbing me, he was stabbing you...'

— Is this correct.
— Attempts were made to NSW.?
— Follow up with Crime.

— Follow up with Crime what was Rolfe's?

— Is this an issue for trial.

⁸³ This critical decision was not recorded on PROMIS.

⁸⁴ Professor Alpert is highly critical of Watch Commander Furniss due to his inability to recall if he read the email from Sgt Frost, sent at 1659 hours 9/11/2019, which containing the Ops Order. By this time Furniss had already handed over the shift responsibility to the evening shift Watch Commander, Alistair Gall, and Furniss fully involved in dealing with the emergency response to the Ernest Giles Road bus crash. Furniss was due to complete duty at 1700 hours (1 minute after Sgt Frost sent the email) and worked on through until 1800 hours due to the bus crash. Alpert obviously did not realise by this time both Gall and the Territory Duty Officer, Hege Ronning-Burns, were aware of the IRT deployment and Sgt Frost's Ops Order and had taken control. In any case Furniss had no means of communicating with the IRT members whilst they were in transit to Yuendumu. By the time the IRT members arrived in Yuendumu Furniss had ceased duty and Gall was the Watch Commander. Professor Alpert was factually incorrect and his criticism of Furniss (Statutory Declaration – Professor Geoffrey – Page 4) is unwarranted.

Professor Alpert provided his statement well before statements from other medical experts became available. In doing so he did not have the opportunity to properly consider all evidence potentially relevant to his own area of expertise.

The email correspondence between investigators and Professor Alpert suggested that the investigation team were editing (correcting) the draft statement of Alpert.

From: ALPERT, GEOFFREY
Sent: Friday, 14 February 2020 6:40 AM
To: Newell, Wayne
Subject: Re: NT Police - Operation Charwell
Wayne:

I am attaching a draft of my preliminary report. It will give you an idea of the direction I am taking. Please let me know if there is more to review and if there are areas I have missed. Have I addressed all the ares (sic) you wanted me to include. I may address some issues in summary and opinions but am happy to re-organize. Also, let me know if there is inappropriate or (culturally) inflammatory language that I need to change. As we discussed you will be providing me with the list of documents I will include or attach as an Appendix to my report. Once we are comfortable with the organization, style, language and completeness I will draft specific summary and conclusion statements. Also, I am happy to send along any of the documents I cited (mainly in footnotes). And that brings up a style issue. Are you happy with the footnotes or would you rather I incorporate the information into the text of the report. I have spent a lot of time and will be submitting a bill once I have a solid report.
Geoff

From: ALPERT, GEOFFREY
Sent: Saturday, February 29, 2020 11:57 AM
To; Newell, Wayne
Subject: Latest draft
Wayne:

Would you please resend me the draft of my report on which you made updates and comments? I was editing my most recent version to be consistent with my summary and opinions but do not think I have the version on which you made comments.
Thanks,
Geoff

Alpert is a professor of criminology. His credentials as a 'use of force' expert in the United States of America (USA) are acknowledged. He does, however, have issues with other contemporary experts in the USA and was quick to nominate to investigators the name of Dr William Lewinski as a person who Alpert is quoted as saying 'He certainly seems biased towards police' and 'I wonder when he's seen a shooting he couldn't explain because of his theories'. It seems apparent that Alpert is adverse to other 'use of force' experts who may potentially challenge his opinions and, by default, is subject to contextual bias⁸⁵. The investigation team made no effort to consult Dr

→ Is this a matter for coronial post trial.
? → Clarity as to whether what is fact or language or Facts.
→ Is this again something for post trial and depreciable or outcome of trial?
→ As above.

→ Aggravation is the a post trial issue. Is the descendant on acceptance or other or 22-pat evidence

⁸⁵ Professor Alpert gave evidence in support of 5 Death in Custody inquest cases in Queensland in 2017 all involving police shooting an offender found to be brandishing a weapon. Professor Alpert supported the Coroner's findings and defended the police actions in every case despite none of the involved police officers being injured. Reference -

William Lewinski in preference to employing Professor Alpert as their 'ivory tower expert' contrary to the advice provided to them by the D.P.P.

→ but the on issue for DPP.

The suggestion that the Police Federation of Australia would unduly influence the opinion of any other 'Use of Force' police expert within Australasia is unfounded. Clearly Detective Senior Sergeant Barram was not adverse to provide his impartial 'expert' opinion despite being a member of both the Northern Territory Police Association and the Police Federation of Australia.

→ Check on follow up

Assistant Commissioner Anticich highlighted in the minutes recorded for Operation Charwell JMC held on 13 December 2019;

"NTPFES in leading the prosecution have to prove beyond reasonable (sic) and on the issue around justification, authority and response as it relates to the incident itself. Expert evidence as to that authority and response is imperative".

"NTPFES need to provide critical evidence (evaluation on the officers conduct) to avoid any misinterpretation".

"NTPFES must lead this critical evidence"⁸⁶.

Detective Senior Sergeant Barram was selected to provide the 'critical evidence' and, in reviewing the content of his first statement it was evident he was subject to 'confirmation bias'⁸⁷. The pressure brought to bear on him to provide his 'expert' opinion was done so in haste and, similar to Professor Alpert, prior to all available and relevant evidence, including possible exculpatory evidence, being made available to him for consideration⁸⁸.

→ is the statement of Botterill exculpatory.
→ Prosecution issue?

The pressure placed upon Barram was compounded when he was required to form part of a visiting police delegation to Yuendumu on 5 December 2019. This police delegation, which included the Assistant Commissioner Crime and Integrity (Anticich), Commander Crime (Dole) and the Senior Investigator, Acting Superintendent Pennuto, met with a 'select committee' answering questions from family regarding aspects of the investigation. It was highly inappropriate for Barram to attend a meeting of this type and it potentially compromised his integrity and independence status as an 'expert' by doing so.

→ Systems issue?

Operation Charwell JMC minutes #7 recorded on 6 February 2020;

Coroners Court of Queensland – Recommendations from Inquest into the Deaths of Anthony William Yung, Shaun Basil Kumeroa, Edward Wayne Logan, Laval Donovan Zimmer and Troy Martin Foster delivered on 20 October 2017.

⁸⁶ Joint Management Committee [JMC] Major Crime, Major Investigation and Critical Incident Minutes – Meeting #3 – 13 December 2019, P.2 - 3

⁸⁷ Instruction - Major Crime, Major Investigation and Critical Incident Response – Para.31 'Confirmation Bias': When examiners give extra weight to or intentionally seek advice that will endorse their expectations and beliefs while unintentionally ignoring evidence that could negate their belief.

⁸⁸ Dr Paull Botterill provided his statement indicating that Constable Eberl's injury was consistent with '...the movement of a sharp or pointed edge across the skin surface...'. This statement was not completed until 6 June 2020, well after Barram and Alpert lodged their 'expert' opinion statements.

'It was confirmed that Superintendent Andrew Barram is to stay with the Crime investigative team until his project work is complete'.

In light of this it is difficult to accept that either Barram or Alpert could claim their 'neutrality' as an expert. Barram was firmly ensconced within the investigation team and Alpert was contracted to provide evidence by the NTPOL executives who formed part of the Operation Charwell investigation and who approved his selection, in contrary to the advice of the D.P.P. Not surprisingly both Barram and Alpert provided identical opinions given access to the same restricted information.

In the case of Rolfe any perceived investigative bias was seemingly not in his favour as opposed to the investigative bias obviously demonstrated by NTPOL investigators in the police shooting 'Death in Custody' of Jabanardi at Ti-Tree on 29 July 1980. On that occasion the Royal Commission into Aboriginal Deaths in Custody Inquiry that followed was highly critical of the investigative bias exhibited by police in favour of the accused to the extent that it was suggested that such obvious bias warranted internal police discipline. Over 40 years later the investigative bias is still evident but now reversed to the detriment of the accused.

Use of Body Worn Video

Following the shooting of Walker there were at least 7 occasions at Yuendumu Police Station noted when conversations between police officers related to turning off their BWV. They are summarised as follows;

1. Constable Eberl BWV 3 of 4 (actually being worn by Rolfe⁸⁹) – Recorded in the Yuendumu Police Station the muster room. Sgt Frost is on the telephone talking to Superintendent Hege Burns. When Sgt Frost is finished on the telephone she walks towards Rolfe who is sitting in the muster room and says **'are you? are you?'** as she indicates towards her chest. She then say **'turn it off'**. Rolfe then turns the camera off. – **10:37:46Z = 20:07:46 local time**
2. Constable Hawkings BWV 3 of 10 – CPR on Walker is occurring in the cell. Hawkings leaves the cell and enters the Muster room where Rolfe is sitting on a chair and Sgt Frost is on the phone. Sgt Frost gets off the phone, walks towards Hawkings and says **"do you want to turn it off"** as she points as Hawkings chest. Hawkings then turns his BWV off. – **10:41:27Z = 20:11:27 local time**
3. Constable Eberl BWV 4 of 4 (actually worn by Rolfe) – Immediately following death of Walker. A decision is made not to continue with CRP. Rolfe walks out of the cell where he interacts with Donaldson. Rolfe says **'we're all off'** and Donaldson replies **'we're all off, yeah'**. Rolfe then turns his BWV off. – **11:06:37Z = 20:36:37 local time**
4. Constable Hawkings BWV 4 of 10 – Hawkings is in the muster room preparing to leave. Sgt Frost is on the phone in the muster room. Hawkings leaves the muster

⁸⁹ During the wrestle with Walker Constable Eberl's BWV dislodged. As Walker was placed in the rear of the Police Van Constable Rolfe's BWV dislodged. They then inadvertently had swapped cameras when they were re-attached to their uniforms.

— Question for Coroner & DPP.
— Is this bias?

opinion?
— Detrimental to the accused?
— Review and consider in relation to Graham.

room briefly. Donaldson, Kirstenfeldt and Rolfe are standing near Sgt Frost. Hawkings approaches the group and then turns and walks down the hall way to the back door of the station. Eberl (possibly) enters the back door one of the members says in a quiet voice "**camera has got to be off**". A member then says "**fucking hell**" and Hawkings turns his BWV off. – **11:13:43Z = 20:43:43 local time**

5. Constable Kirstenfeldt BWV 2 of 2 – this recording terminates with Rolfe telling Kirstenfeldt that when he gets back to Alice Springs he needs to get the 'graze' on his shoulder checked out at the hospital. Rolfe finishes with saying '**We're all off now**' as he points to his BWV. Kirstenfeldt then turns his off. There are then some inaudible comments in the conversation between Rolfe and Kirstenfeldt – **11:15:01Z = 20:45:01 local time**
6. Constable Donaldson BWV 4 of 5 – Donaldson enters the muster room. Rolfe, Hawkings, Eberl and Kirstenfeldt are kitted up and ready to leave the station. Sgt Frost is on the phone to Superintendent Nobbs. Rolfe puts his hand to his chest and says '**is anyone on?**'. Donaldson says '**I'm about to turn mine off**' and then turns his BWV off. – **11:15:07Z = 20:45:07 local time**
7. Rolfe BWV 3 of 4 (actually worn by Eberl) – Hawkings is on the phone to Acting Sergeant McCormack. Instruction given to remain at station. A/Sgt McCormack then passes the phone to Detective Acting Senior Sergeant Leith Phillips. At the time of the phone call the members were in the cars ready to leave. Once members are back in side Hawkings advises the other members that investigators will come out and talk to them. Just prior to Eberl turning the camera off Hawkings says "**we can't discuss anything right now.....cameras are working...**" Eberl then turns camera off. – **11:36:54Z = 2106hrs local time.**

Prior to the Yuendumu shooting the policy advice around the usage of BWV related to ensuring the BWV was turned on.

The current policy pertaining to the use of BWV is contained in the 'Police, Practise and Procedure' intranet page. It states;

BWV will be used in any circumstance where it may assist in providing a record of evidence in respect of the investigation of any offence or suspected offence. It will also be utilised when the use of BWV would provide transparency of an encounter (for example Protective Custody apprehension, stop and search, use of force).

BWV will be switched on prior to, and during any encounter where a member utilises a police power, unless impracticable.

1. BWV may also be used at the member's discretion on any occasion when the member thinks a recording may be of evidential value in the future and to make a recording is proportionate and lawful in the circumstances (for example if you foresee a complaint arising out of police actions or inactions).

2. When responding to an incident with customer contact, in line with the above, members should commence recording at the earliest possible opportunity in

order to maximise the opportunities to capture evidence. Best practice would be to activate recording shortly before arriving on scene.

3. Where the member has been unable to activate their device due to device failure or other circumstances, members will need to justify why in their notebook or other record of the incident, as to why the recording was not made.

Members must be mindful that the use of BWV does not replace existing requirements, procedures or policies in respect of recording admissions, statements or declarations.

BWV may also be used at the member's discretion on any occasion when the member thinks a recording may be of evidential value in the future and to make a recording is proportionate and lawful in the circumstances (for example if you foresee a complaint arising out of police actions or inactions)

The threshold for deciding whether an incident will be of evidential value is a low threshold. The incident may be required as evidence in other proceedings such as civil actions, Domestic Violence Order proceedings or in relation to ongoing investigations that may not be immediately apparent to the member. It is better to have recorded the footage and not need it than not to have recorded anything and subsequently find that the opportunity to record evidence was missed.

The decision stop recording rests with the member. However, members should be satisfied that, in making the decision to stop recording, the risk of not capturing evidential material is minimised.

A fixed recording system such as Watch House Closed Circuit Television (CCTV) takes primacy for recording the encounter with the subject.

Since the Yuendumu shooting policy advice has been amended to read⁹⁰;

If a member has not activated their BWV, or turned the device off, the member must justify their reasons and must record that reason in their notebook, and make notation on PROMIS. Prior to any temporary suspension of recording the member is to make a verbal announcement explaining the reason for the suspension and if applicable obtain the other persons consent on the footage prior to suspending the recording. On recommencing recording, the member is to announce to those present that video and audio recording has restarted.

Regardless of policy advice, the police officers at Yuendumu on the night of 9 November 2019 were aware of the critical issues they faced following the shooting and death of Walker. The BWV worn by members should have left to record all involvements and conversations⁹¹. The CCTV at Yuendumu Police Station did not have an audio recording capability.

— BWV not left on

⁹⁰ PFES Communications – Internal Broadcast 'Body Worn Video – Reminder – Mandatory Requirement to Wear and Use' – issued 31 August 2020

⁹¹ The manufacturer claims that with a fully charged working battery, the Axon body 2 can run for 12+ hours in standby mode. The storage on the camera is able to hold 23 hours of footage before becoming full (based on the

Use of Personal Mobile Telephones to Capture Evidence

At the point in time when members were preparing to leave Yuendumu Police Station, Senior Constable Hawkings took it upon himself to record the confines of the station and the body of Walker on his private mobile telephone. Earlier Hawkings took photographs of Rolfe's shoulder injury on the same telephone. Hawkings provided this evidence to investigators but retained possession of his mobile telephone. There is no control over how such evidence is stored or shared with other members. It was not seized by investigators and it remains unknown what other information of relevance to the investigation may have been captured by Hawkings on his mobile device.

It is becoming increasingly common for members to capture data images or recordings on their mobile devices that relate to their official duties as a police officer. This poses a risk to the NTPF with members sharing potentially information that may be in breach of legislation⁹².

It is not known why Hawkings elected to record information on his mobile device rather than rely on his BWV. However it is a developing trend that should not occur while BWV remains available to members. The images of the deceased should remain within the control of investigators.

Adherence to prior Royal Commission into Aboriginal Deaths in Custody and Northern Territory Coronial Recommendations

1. Dragging of persons in custody

The Coroner has clearly expressed his disapproval of any form of police dragging a person in custody in previous 'death in custody inquests'.⁹³ The dragging of Walker after he had been shot and handcuffed by police again raised the question as to why this practice still continues.

Prior to 31 January 2013, there was no specific instruction or policy that articulated the requirements of Police in relation to the dragging of prisoners in custody. Instructions around the dragging of prisoners were first disseminated by way of gazette notice on 31 January 2013.

This instruction would appear to have been in response to the Coroners findings from the Terence Daniel Briscoe Inquest that were published on 17 September 2012 where the NT Coroner, Mr Greg Cavanagh made recommendation to the NT Police Force:

'That police be directed that the practise of dragging detainees or prisoners on the ground in the Watch House is unacceptable and should not occur, save for the most exceptional circumstances. Where prisoners are unable or unwilling to walk,

current video capture quality configuration used by the NT Police – Low HD 720P). The operating time for a body worn camera will reduce over time as battery performance degrades from repeated use amongst other things.

⁹² Police Administration Act S155 'Unauthorised disclosure of confidential information'.

⁹³ Refer to Northern Territory Coronial Inquest into death of Terrence Briscoe (2012) and Cedric Trigger (2010)

→ System Issue
- Polcom

Due to obvious circumstances it was not possible to segregate police witnesses while they remained at Yuendumu.

Investigators did their best once they arrived at Yuendumu to ensure the IRT members and DOU member were interviewed as soon as practicable in the early hours of Sunday 10 November 2019.

Unlike his fellow IRT members, however, investigators did not subject Constable Rolfe to an immediate 'field' interview upon his return to Alice Springs. Instead he was allowed to communicate with the NTPA legal representative and receive medical treatment. This was permissible under the advice contained in the *'Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public'*.

Constable Rolfe was then visited at the Alice Springs Hospital while he waited as an outpatient by members of his patrol group. Despite an investigator being present there was no attempt to stop this from occurring. He was also in contact with friends and family who offered support. Further, the same investigator was told by his superior, Detective Acting Senior Sergeant Leith Phillips, to ensure Rolfe did not return to the Alice Springs Police Station that night/morning. Rolfe, in company with NTPA representatives, then attended Alice Springs Police Station, entering the Station before then communicating with D/A/S/Sgt Phillips⁹⁴. Phillips advised Rolfe to then go home and rest and that a statement would be obtained from him later the same day (Sunday 10 November 2019). Rolfe then left the station before returning to the Station later that (Sunday) morning. He then communicated with other police officers before leaving the Station. He did not make a statement at that time while investigators deliberated over the timing of his statement.

Upon viewing the BWV of Rolfe at 1501 hours, Sunday 10 November 2019, the Senior Investigator, Acting Superintendent Pennuto, held concerns over the actions of Rolfe. Any intended interview with Rolfe was then postponed while investigators decided whether the interview with Rolfe would then be held under caution instead of a voluntary statement.

The interview with Rolfe was further delayed until the Assistant Commissioner, Crime and Integrity (Anticich), the Commander Crime (Dole) and Pennuto liaised with the Director of the D.P.P. on Monday 11 November 2019. Advice was then provided by the D.P.P. that Rolfe should be interviewed under caution.

On Monday evening a social gathering occurred at Rolfe's residence. The gathering included members of Rolfe's patrol group, police friends and fellow IRT members who had been at Yuendumu with Rolfe when the shooting occurred. This was not unexpected when considering Rolfe had not been given any directive by the Senior Investigator regarding not associating with any other police witnesses prior to being interviewed.

On Tuesday 12 November 2019 Rolfe, in company with his legal representative, read a statement to investigators in Alice Springs indicating he would not be discussing the

Attempt
Dressy Gun ?

Why no initial
interview . ? .

Separation ??
→ Non Compliance GO

Why no interview
or statement .

No Direction
to remain separate
or discuss matter .

⁹⁴ Rolfe had his personal vehicle parked at the Alice Springs Police Station.

matter further. Rolfe was not directed to answer questions in accordance with 'directed interview' provisions of Section 79A, *Police Administration Act 1978* 'Member to answer questions or give information in relation to breach of discipline'.

Assistant Commissioner Anticich summarised the reasons why a directed interview, or any other form of coerced interview, did not take place as follows;

*'Based on early assessment, the actions of Zac Rolfe (ROLFE) were questionable and possibly criminal. It was decided, in accordance with normal practice that the investigation of possible criminal acts would take precedent. Matters concerning discipline or misconduct were not forgotten but rather deferred until the criminal investigation could establish any criminality. A disciplinary interview is compelled, the officer must answer questions put to him or face disciplinary sanction. Nationally we have seen police officers refuse to answer questions in compelled interviews on the basis of incrimination in criminal conduct. This has resulted in the practice of criminal investigations taking primacy, and/or disciplinary matters being considered later or separately, depending on the jurisdiction. Criminal interviews need to occur where the suspect is under no coercion and makes it of their own free will.'*⁹⁵

— Follow up with SFAI on this issue for Coronal.

The 'Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public' directs;

'All members directly involved in a death in custody or serious incident will be interviewed before the completion of their shift where possible. The interview of members directly involved in the incident will take the form of an audio and video record of interview. If not practicable to video, the interview must be audio recorded'.

With the exception of the undertaking of an interview with Rolfe this did occur with other police witnesses.

As regards Rolfe, the General Order states;

'All members will be given the opportunity to seek legal advice. Where legal advice is sought by a member and it is not possible to obtain that advice before the end of a members shift, the member should be interviewed as soon as practicable thereafter. Where this is the case, members involved in the incident must remain segregated and are to be instructed not to confer with or consult with any other member involved in the investigation'.

This did not occur for the reasons mentioned previously by Assistant Commissioner Anticich. It was also highlighted by the Northern Territory Coroner in the **Robert Jongmin Inquest** the perils of interviewing a (police) witness too early into an investigation without having sufficient fact to put to the witness⁹⁶. In considering that a

⁹⁵ Statement of Assistant Commissioner Nick Anticich, P.2, Para. 8

⁹⁶ Northern Territory Coronial Inquest into the death of Robert Jongmin [2007] NTMC 080 - Para. 96

similar issue arose in this case it was prudent for the Senior Investigator to delay the interview until he at least had time to view Constable Rolfe's BWV. After that time Constable Rolfe was considered a potential suspect in a homicide and the initial concerns held by the Senior Investigator that an offence may have been committed were later confirmed when he met with the D.P.P. It would be imprudent to suggest the Senior Investigator erred or did not abide by the General Order *'Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public'* by failing to interview Constable Rolfe at the earliest opportunity.

In this regard Constable Rolfe did not receive any preferential treatment but, in hindsight, the Senior Investigator should have instructed that Rolfe, at least, not meet with, or discuss the case with any other (police) witness involved in the investigation.

It is noted that once Rolfe was arrested his bail conditions included not to associate with various critical police witnesses. Police, other than those mentioned in the bail conditions, remained in contact with Rolfe offering support and advice.

3. Use of Interpreters

The investigators who attended Yuendumu from Alice Springs on 10 November 2019 immediately obtained 5 audio statements from Aboriginal witnesses at Yuendumu⁹⁷. None of these witnesses were interviewed in the presence of an interpreter. Only one was offered a support person when being interviewed. None were offered counselling.

During questioning it was not established if any of the witnesses spoke English as their primary language. While all seemed to have a reasonable interpretation of English it was not established by the investigators if the witness required any form of assistance (with the provision of either an interpreter, support person or counsellor).

The General Order *'Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public'* states;

25.6 *Interpreters should be used wherever necessary (refer General Order – Interpreters and Translators).*

The General Order – *Interpreters and Translators* further state;

15. *Members should also be aware that a failure or refusal to provide an interpreter may, in certain circumstances, contravene the Anti-Discrimination Act. Members shall not dissuade a person from requesting an interpreter in any way. It is a person's right to be able to communicate freely and fully with police.*
16. *Likewise, in any situation where evidence is obtained from a victim or witness by interview, and English is not the first language of the victim or witness, the use of an interpreter is likely to enhance the quality and accuracy of that evidence.*

⁹⁷ Yuendumu witnesses included Ayetta DICKSON, Leanne OLDFIELD, Elizabeth SNAPE, Jerome JURRAH & Nathan COULTHARD.

Agree.

Investigators need to remain aware that the provision of interpreters and support persons are a fundamental right for any aboriginal person where English is not their first language.

Interpreters were utilised by investigators after the 10 November 2019.

4. Crime Scene & Re-enactment

Following the shooting of Walker there were no immediate plans or discussions around establishing a crime scene at House 511. No critical decisions were recorded as to why there was no crime scene established. It was left to the IRT members to explain why;

As summarised by Constable Eberl;

WOOD:Yep. Um, why was a crime scene not established at that house?

EBERL: *For safety reasons. We needed to get out of there because um, it's – you can only see how things would have unfolded. I know being what community members are like, if we were there rendering first aid, whether they would have attacked us there while we were trying, but if he would have passed away there in the house, then they would have wanted payback then and there.*

WOOD: *Mm-hm.*

EBERL: *And potentially one or maybe more people could have died or got seriously injured etcetera.*

A crime scene was established once the TRG members arrived in Yuendumu and at a time when next of kin were notified. By that time the crime scene had already been entered by family members and Walker's had, which had fallen off when he was dragged to the police vehicle, had been placed back inside House 511.

Questions were raised by family as to why no crime scene was immediately established at House 511. As stated by Eberl it was not a practicable consideration at the time.

A similar occurrence was reported in a previous 'death in custody' investigation involving a police shooting at Wadeye. It was reported by the Coroner at the time;

"Some criticism was levelled at the police for failing to require Whittington to participate in a reconstruction at the scene of the shooting. I accept the explanation given by Hofer that such a reconstruction was impractical in the circumstances where there was considerable unrest in the community and Whittington's safety was endangered if he remained in the community (transcript p.357 & 366). I also accept the explanation given by Hofer that it was very difficult to secure the crime scene for similar reasons (transcript p.354)".

For the same concerns held by police as outlined in the above case (Jongmin) neither the crime scene was immediately secured or a re-enactment contemplated.

5. Welfare

'Death In Custody' protocols regarding 'welfare' are contained within the General Order *Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public* state;

30. It is essential that the duty of care and welfare obligations to members involved in incidents and their families be appropriately addressed.

30.1 Any member involved in such an incident will be provided welfare services after appropriate initial enquiries are conducted. (Eg - Employee Support Service).

30.2 A member will be given an opportunity to contact their family.

30.3 Where necessary a member directly involved in the incident is to be offered an examination by a medical practitioner.

30.4 The NTPFES Chaplain should be advised of such incidents and should where practical be permitted to attend scenes of fatal incidents and deaths in custody/care in order to provide appropriate support.

30.5 The Commissioned Officer in overall charge of the investigation shall ensure that immediate welfare assistance is offered to those members of the public directly involved in the incident or at the incident scene (i.e. witnesses). However, long term arrangements of welfare support will not be the responsibility of the NTPF.

All welfare obligations regarding police members were met with the exception of the NTPFES Chaplain visiting the incident scene.

Following the shooting senior police executives flew to Yuendumu on Sunday 10 November 2019, including Acting Assistant Commissioner Wurst and Acting Commissioner Michael Murphy.

Police met with family and senior community elders and addressed immediate concerns over the actions of police and the investigation that was to follow. Cultural considerations were respected including allowing the community to walk through the police station to the scene (police cells) where Walker died. No family counselling services were specifically arranged by police but senior police management were in constant dialogue with family and senior community elders over the days following the shooting.

6. Notification of Next of Kin

The notification to family of Walker's passing by police was delayed, primarily over concerns for both community and police safety.

The Royal Commission into Aboriginal Deaths in Custody, adopted by both the NT Government and NT Police states;

Recommendation 19. *That immediate notification of death of an Aboriginal person be given to the family of the deceased and, if others were nominated by the deceased as persons to be contacted in the event of emergency, to such persons so nominated. Notification should be the responsibility of the custodial institution in which the death occurred; notification, wherever possible, should be made in person, preferably by an Aboriginal person known to those being so notified. At all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known*

In 1994/1995 The NT Government gave qualified support to this recommendation. In the NT Government implementation report, it stated:

“The relevant Police General Order Coroners and Inquests – Code C9 has also been amended to include the words “as soon as possible” and “a family representative”, thus achieving the intent of the Recommendation”.

In Police General Orders now (Coronial Investigations and Inquests) and as back as far as they exist on the intranet (2008), the term “as soon as practicable” is used, not “as soon as possible”.

In the Deloitte Review (released in August 2018) into the implementation of the recommendations, NT Police responded with:

NT Police General Order – *Deaths in Custody and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1)*

25.10 If the deceased is an Aborigine, a family representative of the deceased (where appropriate) and the relevant Aboriginal Legal Service or other appropriate Aboriginal community organisation is to be notified of the death as soon as practicable.

25.11 Information regarding the progress of the investigation that is being sought by the deceased's family, the Aboriginal Legal Service, or Lawyers representing the family should only be released through the Coroners Office.

The decision to delay notifying family of Walker's passing was made by Acting Assistant Commissioner Wurst. He justified the rationale behind this decision as follows;

WURST: He had passed away some ten minutes or so earlier. Um, one of the other critical decisions that flow from that at this point in time was, with the knowledge that he had passed away, ah, I don't know whether the health staff were at the police station by this stage or not, um, I'm unsure. But one of the decisions the required – required to be made at this time was when and how we informed the community that this person had passed away. We had an absolute need to inform the community. Um, so that they could respectfully commence their um, cultural grieving process, a process that I've, have knowledge of. Um, and it's a very important process for the Warlpiri people and the Warlpiri family, particularly those closely related to the person who passed away. I however, made the decision that we would not at that point in time inform the family. For all the reasons I've previously stated, I was not comfortable that they, and when I say they, the community members who were out the front of the police station and those that,

there was only um, there was a lot more people in the community that were out the front of the police station. They themselves could have also come to the station and it placed – would have placed the station under greater threat of um, and risk of harm to the station itself and the officers, people within. Ah, as I say, you had the um, the scenario, that if we had two health staff in there as well, we have other people in that station that are not police, but we have a duty of care to them because we've called them to our um, to our aid. So I made the decision at that time ah, that we would not inform the family that the young person – or the person had passed away. However, um, I was already developing a plan for how we would do that, and do that as soon as possible, for the community.

7. Deployment of para-military police into Aboriginal Communities

The Royal Commission into Aboriginal Death in Custody (RCIADIC) recommendations included the following recommendation (61);

RCIADIC 61. That all Police Services review their use of para-military forces such as the New South Wales SWOS and TRG units to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities.

This recommendation was accepted by the Northern Territory Government with the 'Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody' reporting;⁹⁸

The Northern Territory Government's Territory Response Group has operational procedures and guidelines in place to ensure that there is no unavoidable use of the Territory Response Group.

The Northern Territory Government has implemented Recommendation 61 through operational procedures and guidelines in place to ensure that there is no unavoidable use of the Territory Response Group.

Unfortunately this recommendation (61) was not incorporated into the regulations (SOP's) relating to the IRT. The Alice Springs IRT did not exist when the recommendations were made between 1987-1991. The TRG has strict procedural controls that require Assistant Commissioner approval prior to any deployment into an Aboriginal community.⁹⁹

Criminal – v – Coronial Investigation

The death of Walker resulted in two investigative streams with one focussed on the criminal case and the other dealing with the (multiple) coronial issues arising from his death.

Primacy for obtaining witness information, including that from police, was given to the criminal investigators. This resulted in a confused approach to obtaining evidence with

⁹⁸ Deloitte Access Economics 'Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody' Department of the Prime Minister and Cabinet August 2018

⁹⁹ General Order – Tactical Response Group – Para 24.

criminal investigators referring to the powers of the Coroner under the *Coroners Act* 1993 [NT] when interviewing police witnesses compelling them to provide information.

On 5 February 2020 JMC Minutes for Operation Charwell #7 Investigations recorded an 'Action Item' – *Clarifying Statement of Intent & Operation Process* – in response to the issues arising in obtaining evidence from some police witnesses who were reluctant or otherwise unwilling to provide evidence (statement);

- a) Draft a clarifying document that clearly explains the process, states and outlines the interviewing process according to the PFES General order
 - o Refer members to internal NTPFES link:
 - Deaths in Custody Policy and the relevant General Order if further clarification is required by nominated member requested to provide a statement.
 - List variations of resistance.
- Reference the *Coroners Act* 1993 [NT] and section pertaining to compellable witness requirement by a Coroner Office direction.

Having a police officer charged with murder in a 'Death In Custody' scenario is a rare event. There is no clear NTPFES policy guideline for dealing with such a scenario in either the '*Major Crime, Major Investigation and Critical Incident Response*' Instruction or '*Death In Custody and Investigation of Serious Incidents and/or Fatal Incidents Resulting from Police Contact with the Public*' General Order . In a case where the police officer is charged with 'murder' then the usual rules of evidence relating to the collection of witness evidence for a criminal investigation should be maintained.

An example of the confusion caused when investigators attempted to obtain an audio recorded statement from a Senior Officer was highlighted during the interview with Assistant Commissioner Dr Narelle Beer as follows;

BEER: *So you're saying that it's voluntary as to whether I provide a Statement however you've indicated to me by email that if I don't provide a Statement, I may commit a discipline offence and be subject to discipline action pursuant to 25.4 of the Death in Custody. So you're actually compelling me to make a Statement and therefore it's not voluntary¹⁰⁰.*

And further;

BEER: *So my concern is the admissibility of the Statement. So if I'm being compelled or obligated under a General Order, given that if I don't, then I'm subject to discipline, to make this Statement, then how is it admissible as a, as a voluntary Statement.*

¹⁰⁰ Statutory Declaration (1) of Assistant Commissioner Narelle Beer - P.3

- WELLFAIR: *I think that's a discussion that um, you might have ah not with us as the investigators into the Criminal matter. Um, from –*
- BEER: *But you've emailed me saying that I have to make the Statement.*
- WELLFAIR: *That's right, I've emailed you under the, to advise you as to how we are operating and under what guidance we operate.*
- BEER: *And what will happen if I don't. So, it's contrary to what you're actually saying. That's where my confusions lies¹⁰¹*

Assistant Commissioner Beer, in her defence, makes a valid argument around what powers and policy the investigators are relying upon in their efforts to obtain admissible evidence from witnesses for the criminal prosecution case against Rolfe.

A criminal investigation, separate from the coronial investigation, should adhere to the usual rules of evidence when attempting to elicit information of relevance from a witness. It is not known why the criminal investigation team elected to refer to or attempt to use powers contained within the *Coroners Act 1993 [NT]* when gathering their witness evidence. In the case of a criminal investigation there is no rule of law that compels a police witness to answer questions or to provide a statement. During a coronial investigation or at inquest however this may not be the case.

Following the trial of Rolfe it may be prudent to review how criminal evidence from police and civilian witnesses is best obtained in future and thereafter provide clear and unambiguous policy advice to investigators. Any suggested use of the coercive powers of the *Coroners Act 1993 [NT]* should only be employed under the direction and with the authority of the Coroner.

Ancillary Issues

1. **Appointment of suitably experienced senior investigator** – recommend interview with Supt Pennuto post trial.

2. Cultural Awareness Training

Over his three months of probationary training Constable Zachary Rolfe and his recruit squad received one week of 'cultural awareness' training involving a series of lectures around issues police face when policing remote communities and a basic introduction to aboriginal culture. This week of training culminated in an attendance at Bagot Reserve to meet with Bagot community elders and to interact with aboriginal youth through a game of basketball.

Previous police training has involved visiting a remote community (Daly River) and spending a number of days appreciating the issues faced by police and understanding the nuances of remote community policing.

Over his 3 years of policing Rolfe had never served in a remote community. Had he done so he may have adopted a different approach when he attended Yuendumu on 9

¹⁰¹ Statutory Declaration (1) of Assistant Commissioner Narelle Beer – P.6

November 2019. He would have at least an opportunity to understand the ramifications of adopting a militant response as opposed to a negotiated surrender.

The importance of educating recruits has already been highlighted by Deputy Commissioner Michael Murphy in his statement;

59. One of many important aspects of the Committee is the focus on the cultural aspect, with the need to review training specific to each geographical location, creation of individual and relevant induction packages for officers, and how cultural appreciation is delivered for each region. Engagement will be necessary with key local stakeholders to ensure local knowledge and understanding is imparted to our officers serving the respective communities¹⁰².

It is recommended that all future police recruits serve a tenure of probation in a remote aboriginal community.

3. Chief Minister's 'Consequences will flow' comment

On Tuesday 12 November 2019 the Northern Territory Chief Minister Michael Gunner, accompanied by the newly sworn in Northern Territory Police Commissioner of Police, Jamie Chalker, travelled to Yuendumu where he addressed residents at a public gathering. The Chief Minister promised that the Northern Territory Coroner would conduct a thorough independent examination into the circumstances surrounding the death of Walker and assured the gathering that '*consequences will flow as a result of that investigation*'.

Constable Rolfe was arrested the following day and charged with murder.

The coronial investigation did not find that these comment made by the Chief Minister influenced the decision to arrest Constable Rolfe. The decision to arrest Rolfe was made by the Senior Investigator following a meeting with DPP on Wednesday afternoon, the day after the Chief Minister made his '*consequences will flow*' comment at Yuendumu.

Health withdrawal of services at Yuendumu

Shortly before 11.00 a.m. on Saturday 9 November 2019 a decision was made by senior Central Australian Health staff to withdraw health services staff from Yuendumu.

Endangering the life of Health Staff

With the pending arrival of Police re-enforcements at Yuendumu Sergeant Frost made the decision that she would send the ambulance and police vehicles to the Yuendumu airstrip to collect incoming police.

FROST:So I came up with the plan um that there will be a Police car, then we'll use the Ambulance ladies in the Ambulance and then another Police care to ensure the Ambulance ladies safety and we'll go in convoy under the pretence of um going

¹⁰² Statutory Declaration of Deputy Commissioner Michael Murphy, Page 7, Paragraph 59 – dated 21 July 2020

*out there to pick up medical staff which um... which is a decision we made for the safety of the members and that's what we did...*¹⁰³

It is not known why Sergeant Frost requested the health staff to drive their ambulance to the airstrip as a decoy in preference to using her own resources. Sergeant Frost was aware that a large hostile crowd was gathered outside the police station and that at various times rocks were thrown onto the roof of the police station. The short journey to the airstrip required the vehicles to pass by the crowd and it was a distinct possibility that the crowd would turn on those travelling in the vehicles at a time when they were still (impatiently) awaiting information in relation to the deceased, remaining unaware that he had in fact passed.

As the vehicles returned to the police station they were pelted with rocks. Nurse, Lorraine Walcott, received facial lacerations to her head as a result of a rock shattering the vehicle window and striking her in the head.

The decision to attempt to deceive the Yuendumu Community into believing the ambulance was conveying Walker to the airstrip was inappropriate as was the decision to use health staff in the attempted deception.

No investigation took place in an attempt to identify who were the perpetrators behind the assault on the health staff.

Internal disciplinary charges

No disciplinary charges against any IRT member, including Rolfe, has progressed beyond Rolfe being suspended, with pay, under the provisions of S76A Police Administration Act 1978 – ‘*Suspension of member facing criminal charges*’. An application is in place, having been made under S162(7)(7A)(9) of the Police Administration Act 1978 to allow for the 3 year extension of any internal investigation in order for the criminal trial to be resolved. The Commissioner of Police will consider disciplinary charges, if appropriate, after that time.

Summary

The Australian Government – Australian Institute of Criminology – released findings in a *Statistical Bulletin – ‘Shooting deaths in police custody’* in February 2020. The report examined the outcomes of 82 shooting deaths between 2006-07 to 2016-17. Recommendations were made from 39 coronial inquests that were directed towards police agencies. These recommendations related to eight main themes;

- Internal Policies
- Training
- Audio and Video Recordings of Police Interactions
- Internal Communication
- Communication with external parties (including relatives of victims and the media)

¹⁰³ Statutory Declaration (1) of Sergeant Julie Frost, Page 22 – dated 13 November 2019

- Critical Incident procedures
- Post-incident procedures
- Investigative Integrity

To various degrees these themes emerged and were identified to be directly relevant to this coronial investigation. Despite not featuring in the 'Statistical Bulletin – Shooting deaths in police custody' the Northern Territory Police may well benefit from a review of these findings.

On 29 October 1999 Northern Territory Police shot and killed Eduardo Concepcion. Although police were cleared of any wrong doing at the time the Territory Coroner raised a pertinent issue;

CORONER (CAVANAGH): "It is unfortunate to say the least that as our society enters the 21st century, law enforcement officers are still resorting to 19th century measures, such as the use of lethal hand guns, when confronting aggression from their fellow citizens. I was told in evidence about the trialling of various non-lethal weapons such as capsicum spray and other options by the Northern Territory Police Force. I recommend the continued search for a non-lethal tool to subdue people like the deceased".

By November 2019, over 20 years after the death of Concepcion, Police had progressed that recommendation and have various advanced non-lethal options at their disposal (including Taser, ASR and bean-bag shotguns). Despite knowing the high probability that Walker would respond exactly as Sergeant Frost predicted the members involved in his arrest did not attempt to utilise their 21st century non-lethal options. In a remote community the threat (Walker) could and should have been easily contained and subdued by the IRT. Instead, in their haste to locate and arrest Walker, the IRT members placed themselves in an invidious position that ultimately cost Walker his life. While now one of those members ultimately faces a murder charge the reality is they should never have been deployed as an IRT by their superiors without strict protocols in place for the apprehension of a 'high risk' offender.

RECOMMENDATIONS:

TBA