

CITATION: *Inquest into the deaths of Wendy Murphy and Natalie McCormack* [2016] NTLC 024

TITLE OF COURT: Coroners Court

JURISDICTION: Alice Springs

FILE NO(s): A0056/2014 and A0017/2015

DELIVERED ON: 21 September 2016

DELIVERED AT: Alice Springs

HEARING DATE(s): 8 - 12 August 2016

FINDING OF: Judge Greg Cavanagh

CATCHWORDS: **Domestic Violence, ten year history of violence, time to consider a different approach**

REPRESENTATION:

Counsel Assisting: Kelvin Currie

Counsel for Police: Jodi Truman

Judgment category classification: B

Judgement ID number: [2016] NTLC 024

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

No. A0056/2014

In the matter of an Inquest into the death of

WENDY MURPHY

ON: 20 DECEMBER 2014

**AT: IN THE SHED BEHIND HOUSE 19
HOPPYS CAMP, ALICE SPRINGS**

AND

No. A0017/2015

In the matter of an Inquest into the death of

NATALIE MCCORMACK

ON 29 MARCH 2015

**AT 33 BOKHARA STREET, ALICE
SPRINGS**

FINDINGS

Judge Greg Cavanagh

Introduction

1. Domestic violence is a contagion. In the Aboriginal communities of the Northern Territory it is literally out of control. As a Local Court Judge I witness it most days. As the Coroner I see the terrible lives these women endure and their horrifying deaths.
2. To cast light on the true horror I determined to hold an inquest into two such deaths (as permitted in my discretion pursuant to section 14(4) *Coroners Act*).

THE STORY OF KWEMENTYAYE MURPHY

3. Wendy Murphy (hereafter referred to as Kwementyaye Murphy) was born in Alice Springs on 5 August 1978. She was the second youngest child of Doreen Murphy. The family moved from Mount Allen to the Charles Creek Community in Alice Springs in the early 1990s.
4. Kwementyaye had her first child when just fourteen years of age and her second child twenty years later. She was 36 years of age when she died.
5. In the Charles Creek Community she met Stanley Scrutton. He later became her husband. He was three years older.
6. By the time they entered into a relationship he had already come to the attention of the criminal justice system due to violence against another woman.
7. In the year 2000 his girlfriend was holding her 14 month old child when he hit her with the blunt end of an axe to the head and ribs. The assault left her with a gash to her head, two fractured ribs and a fractured hand. He was sentenced to nine months imprisonment.
8. Most indications are that it was also about that year that he and Kwementyaye began a relationship.

History of Domestic Violence

9. There were 45 domestic violence incidents between Stanley Scrutton and Kwementyaye Murphy to which Police were called from 2003 until her death in 2014.
10. On twelve occasions the allegation was that she had been punched or otherwise hit to the face or head. On one occasion it was alleged that Mr Scrutton had used a bottle to hit her to the face breaking her tooth.

11. On nine occasions the allegation was that she was kicked to the face and head.
12. On eight occasions the allegation included being kicked to the ribs or the lower back and on three occasions she was punched and kicked until unconscious.
13. Mr Scrutton is first recorded by Police as assaulting Kwementyaye in May of 2003. She said that he kicked her in the ribs and chest. She was taken to the Hospital. However she did not wish to make a complaint.
14. In June the following year he again assaulted her. The assault left her with a black eye. But again she did not wish to make a complaint. She said he was drunk.
15. The following day Police once again had cause to talk to Kwementyaye after it was reported she had again been assaulted. He had thrown his shoe at her striking her in the face. But again she did not wish to complain.
16. The following month Kwementyaye was dragged and kicked by Mr Scrutton. Her legs were hurting but she did not wish to make a complaint.
17. On some of the occasions that Police were able to take action Victim Impact Statements were obtained. They are of some assistance in understanding the way she viewed the violence.

Victim Impact Statement 1

18. The first, dated 9 May 2005, reads:

“I don’t want Stanley to go to gaol. He only gets cheeky when he’s been drinking a lot. He would not get in trouble if he didn’t drink so much. Stanley is a good man if he is not drinking”.

19. That Victim Impact Statement was obtained in relation to allegations that while drinking together at the Gap View Motel they began to argue over

money. Mr Scrutton struck Kwementyaye to the face with his hand causing her nose and mouth to bleed. Later that night he dragged her by the hair, kicked her to the head and torso and stomped on her head. She required surgery to her left elbow and sustained severe bruising.

20. On that occasion he was sentenced to nine months imprisonment suspended after two months on condition that he attend and complete the program at CAAPU (a rehabilitation facility). He didn't complete the program.
21. Before 28 August 2007 there were another six times that Police were involved due to domestic violence. Those included a time when Mr Scrutton kicked Kwementyaye to the face for which he served 6 months in prison.
22. It is a terrible truth that there were so many recorded assaults on Kwementyaye that it is not necessary to detail all of them to make clear the horrendous nature of the violence she experienced.
23. The Police facts of 28 August 2007 state:

“The defendant began shouting at the victim as she entered House 11. He pushed her onto the bed. The defendant then kicked the victim repeatedly.

The defendant, with boots on, kicked the victim twice on the right side of her face and once on the left side of her face. The defendant continued to repeatedly kick the victim on the back of her head, on her back and throughout her abdominal and kidney region as she lay unconscious on the bed”

24. Then a few days later on 1 September 2007:

“The defendant was drinking with his family ... at about 2000hrs the defendant approached the victim and hit her with his right elbow and forearm causing the victim to fall to the ground”

25. By his actions he was also in breach of a domestic violence order (DVO). When asked by Police in an interview why he repeatedly kicked the victim he said, “We’ll leave it at that, I want to go to prison”.
26. He was sentenced to eleven months imprisonment for the first assault and 8 months imprisonment for the second. His sentences were to be suspended after serving 6 months on entering into conditions that included anger management and an alcohol rehabilitation program. Mr Scrutton was released from prison at the beginning of March 2008.
27. Two months later in early May 2008 he was “jealousing”. He took his belt off and beat Kwementyaye causing swelling, bruising and pain.
28. On 9 May 2008 he called her over to where he was drinking. She went over and provided him with food. She was walking back to her residence when he kicked her to the throat. He was wearing ‘riding boots’. She was knocked unconscious and was found by family bleeding from the mouth and having difficulty breathing.
29. Kwementyaye refused to make a complaint or provide a statement. She said she would have further problems with him if he was sent to gaol.

Victim Impact Statement 2

30. A Victim Impact Statement of 3 October 2008 reads:

“I would like Stanley to get help from CAAPU”.

31. There were three separate assaults on Kwementyaye before the Magistrate on that occasion. At the time of all three, Mr Scrutton was subject to a DVO. He was sentenced to imprisonment for a total period of 24 months. The minimum term was set at 14 months. The assaults happened over a single week in September 2008:

- On 11 September 2008, during the course of an argument, Mr Scrutton kicked Kwementyaye to the head. She suffered swelling and bruising. For that Mr Scrutton was imprisoned for 6 months.
- On 15 September 2008, Mr Scrutton and Kwementyaye were drinking on the front lawn together. He punched her to the right side of her face and multiple times to the body. He threw her to the ground twice. She suffered bruising and swelling to her head, torso and limbs. She was taken to hospital for treatment. He was sentenced to 8 months imprisonment cumulative on the previous sentence.
- On 17 September 2008, Kwementyaye and Mr Scrutton were together and he became jealous and angry. She expressed a desire to go to her family and stood up to leave. He punched her to the face causing her to fall to the ground and then repeatedly kicked her to the face, head and body. She screamed and it was only due to the intervention of others that the beating stopped.

She had severe swelling and bruising such that her right eye was completely shut. She had a laceration to the right eye that required suturing, a laceration to the top of her head, a very large bruise across her whole lower back and other bruising about her body. Those that had intervened called the Police. That led to the arrest of Mr Scrutton for the offences. He was sentenced to 10 months imprisonment for that assault cumulative on the other sentences.

Victim Impact Statement 3

32. A Victim Impact Statement made on 2 February 2011 stated:

“I get very sad when Stanley hits me. I get very scared and think one day he will go too far and I will end up dead. My kids would be without their mother. They would be so sad.

I really hate Stanley when he is drinking. I hate him when he hits me.

I want a domestic violence order for two years so Stanley cannot hit me.”

33. On that occasion she had been kicked and punched until she was unconscious. She didn't want to pursue a complaint and Police Officers had to insist that she go with them to the hospital to receive medical treatment.
34. Despite the lack of cooperation from Kwementyaye, Police charged Mr Scrutton. He was sentenced to 8 months imprisonment.

Victim Impact Statement 4

35. A Victim Impact Statement dated 28 November 2011 stated:

“I want him to stay away from me when he is violent.

The judge should tell Stanley to stop hurting me. I'm tired of being hurt.”

36. On that occasion she was woken from her sleep with him stomping three times on the right side of her face. He was sentenced once more to 8 months imprisonment.
37. But on his release he did not stop hurting Kwementyaye. She continued to call Police but became less and less willing to cooperate once Police arrived and the immediate issue was defused.
38. On 26 April 2013, Mr Scrutton smashed a microwave and then punched Kwementyaye to the head and kicked her to the ribs. When Police attended she told them to “fuck off”. She refused to give a statement and refused to allow photographs to be taken of her injuries. She told her family not to give statements. One of the witnesses told Police that she was unwilling to give a statement due to backlash from family.

39. Police however persisted and Mr Scrutton in due course pleaded guilty to the charges and was imprisoned for a total of nine months for the assaults.
40. He was released in January 2014. He came to the notice of Police on twelve occasions for episodes of domestic violence between then and when he was imprisoned for 21 days in July 2014 for breach of a DVO. On each occasion Kwementyaye refused to cooperate with Police. On one occasion after being punched and thrown to the floor she fought him off by stabbing him to the cheek.
41. There were another two episodes before he was imprisoned for seven days for breach of the DVO on 30 July 2014.
42. There were then a further three reported episodes before he was imprisoned for 21 days on 13 October 2014 for breach of the DVO.
43. It was just 14 days after his release that it is alleged he was kicking on Kwementyaye's door and yelling out her name. She told Police that she had feared he would knock the door down but that she was too tired to make a statement.
44. Despite the unwillingness of Kwementyaye to assist Police in prosecuting Mr Scrutton, he was still incarcerated on a regular basis for his assaults on her and breaches of DVOs. He was in prison sixty percent of the time between 2005 and the date of her death.

Her Death

45. On 20 December 2014 Kwementyaye was murdered by Mr Scrutton. She is survived by her daughters who at that time were 22 years of age and 2 years of age.

46. Mr Scrutton sought to hand himself in to Police and made admissions relating to some of the attack. He was intoxicated at the time and said he had blacked out.
47. The forensic pathologist, Dr John Rutherford found at autopsy:
- “1. Lacerations, abrasions and bruises variously to the scalp, face, neck, back and front of the trunk and to both arms and both legs;
 2. Small volumes of blood over the surface of the brain (subdural and subarachnoid haemorrhage), with further blood present deep inside the brain (ventricular haemorrhage);
 3. Bruising to the lungs;
 4. Mild bruising of the bowel, with a small volume of blood in the abdominal cavity;
 5. Fractured ribs on both sides of the front of the chest.”
48. The description of the injuries is confronting. The photographs are horrifying.
49. Her blood contained 0.164% alcohol. Her urine contained 0.292% alcohol.
50. Justice Martin on 17 June 2016 described the attack of Mr Scrutton as a “vicious and prolonged beating”. He said during sentencing remarks:
- “What almost defies imagination is the extent and number of blows that were struck by you. And when I say blows, they weren’t punches. Plainly they were kicks and some stomping. There were over 40 blows ... they caused a range of injuries, including injuries to the brain and the chest which together substantially contributed to the death of Kwementyaye”.
51. He sentenced Mr Scrutton to life imprisonment and fixed a non-parole period of 20 years (the standard non-parole period required by s53A(1)(a) *Sentencing Act*).

THE STORY OF KWEMENTYAYE MCCORMACK

52. Natalie McCormack (hereafter referred to as Kwementyaye McCormack) was born 9 October 1983 in Alice Springs to Margaret Pearce and Peter McCormack. She had one older brother.
53. In or about 2003 she entered into a relationship with Nathan Swan. They had two children, born in 2004 and 2006.
54. After she left school she obtained employment at the Tangentyere Safe House as a youth carer.
55. She loved helping others and she lived for and loved her children. She had no history of self-harm. She was 31 years of age when she died.

History of Domestic Violence

56. According to Police records there was an extensive domestic violence history between Nathan Swan and Kwementyaye McCormack. Police recorded 32 episodes of domestic incidents from 2003 until the date of her death in 2015.
57. The first record relates to a complaint about yelling and arguing. Police attended and found that the argument was between Nathan Swan and Kwementyaye McCormack. The Police then stated, “the two parties have recently started seeing each other ... both parties have DV history but not with each other”.
58. There were a few more incidents over the following years mainly verbal arguments to which Police were called.
59. On 4 April 2008 at 11.30pm Kwementyaye called “000”. She said Mr Swan was hitting her “right now”. When Police arrived she said they had taken too long and the “damage had been done”. She did not want to

make a statement nor did she want Mr Swan removed. She said they would sort it out.

60. On 10 May 2008, Kwementyaye called “000” again and said that Mr Swan was hitting her and the children. Police attended and were told there had been an argument earlier. Kwementyaye had asked Mr Swan to come and remove his belongings from the house. Due to the mounting number of domestic violence related episodes the Police removed Mr Swan and took out mutual DVOs.
61. On 20 December 2008, Kwementyaye and Mr Swan were drinking together at the Casino. On return to the residence Kwementyaye asked for her car keys. Mr Swan refused to give them to her and during the ensuing argument she said he pulled her hair with one hand and punched her to the head three or four times with the other hand. She walked to the phone box and called Police. She provided a statement to Police in which she said “I want this to stop; I need a break from him. I want him charged for assaulting me and to leave me alone”.
62. On 21 February 2009, Kwementyaye called Police to ask why Mr Swan had been remanded in custody. She said she wished for the charges to be withdrawn. She said she needed him at home to assist with the children.
63. On 26 February 2009, she attended the Police Station and completed a statement stating that Mr Swan didn’t hit her and the injuries Police had photographed were received when she had fallen over drunk. She said she called Police because she thought they could get her car keys for her. She said that following that incident they had decided not to drink alcohol and had not done so. The charges were later withdrawn.
64. On 28 June 2009, she made a statement to the Police requesting a DVO. She stated that they had argued. He was leaving and before he left she

- wanted her \$3000 as her half share that she had paid for the vehicle he drove. She had smashed the windscreen and he had hit her, knocking her to the ground. She stated, “I don’t want him to go to court for hitting me but I do want a domestic violence order for if anything happens again”.
65. Reciprocal orders were made prohibiting them remaining in the company of the other when consuming alcohol or when under the influence of alcohol.
 66. On 23 February 2011, Kwementyaye rang Police alleging that Mr Swan had smashed a window of a vehicle and punched her. Police attended and found both parties intoxicated and “hurling abuse” at each other. They removed Mr Swan and provided reciprocal DVOs.
 67. On Friday 10 February 2012, Kwementyaye went out with friends. Mr Swan returned from his separate night out the following morning and found she wasn’t at home.
 68. On Saturday 11 February 2012, at about 7.30pm she arrived home with the children. As they got out of the vehicle Mr Swan walked toward them. He had an axe in his hands and was yelling “Get the fuck out of my house”.
 69. She picked up the youngest child, fled inside and locked the doors. Her eldest child jumped the back fence and ran to the neighbour’s house.
 70. Mr Swan smashed the front and rear windows of her car with the axe and yelled “*Get out of my house, I’m gunna half kill you*”. He then approached a front window and smashed it with the axe bending the security screen. He became aware that Kwementyaye was calling the Police and left.

71. Police located him at his mother's house and there was a 40 minute stand-off during which he was very aggressive, leading to First Class Constable Adrian Keogh unholstering his taser. Mr Swan said he wanted to fight Police and wanted to be tasered. He wasn't. He eventually calmed and got into the Police vehicle. He was arrested, charged and imprisoned for 10 days for being in breach of the DVO.
72. When Kwementyaye made a statement of the events. She wrote:
- “We currently have domestic violence orders against each other that say that we can't be near each other when we are drinking and that we can't threaten or hurt each other or to damage each other's property. This is because there has been such a long history of violence between us.”
73. Mr Swan conceded to the staff from Family and Children's Services that he had a “fiery temper” made worse by alcohol. He was referred to EASA for counselling.
74. On that same day, 11 February 2012 Kwementyaye took the children to the Alice Springs Women's Shelter. She disclosed that Mr Swan had tried to choke her “a couple of years ago”. She said that when he is drunk he gets really close to her face and yells at her and pushes her about. She said that Mr Swan becomes aggressive and violent when drunk.
75. She intimated that he was angry on this occasion because she had been out the night before. Indeed, Mr Swan getting angry when she went out seemed to be a theme of their relationship.
76. From 17 February 2012 she went home from the shelter for sleepovers. She left the shelter on 19 February 2012 saying she would move in with her Auntie. Mr Swan told her that he was sorry and asked that she return to the house.

77. On 20 February 2012, the DVOs were extended for another 12 months and the children included due to the incident on 11 February.
78. She moved back into the house and from 23 February 2012 Mr Swan stayed at the house Monday to Friday, but at his mother's residence on the weekends. Kwementyaye said he didn't drink alcohol on week days.
79. The shelter assisted her with a priority application for housing. She said she sought a safe and permanent home for her and the children. She said that if over the next two years Mr Swan overcame his addictions and abusive behaviour they could be a family again.
80. She said the house where they lived was premises rented from Mr Swan's employer, Alice Springs Town Council. As such he considered the house to be his and his favourite saying was "this is my house, get out". She and the children had left the house and moved around a lot. She did not feel that her safety was improving.
81. Workers from the Department of Children and Families worked with Kwementyaye and the children around their protective needs. They spoke about keeping potential weapons, like kitchen utensils out of sight and keeping a means of escape available. They spoke of making an escape earlier rather than later.
82. Kwementyaye stated that she would often ask Mr Swan, "What am I doing wrong?" He would not answer.
83. During a conversation with Shelter staff on 14 March 2012 relating to the cycle of violence, Kwementyaye suddenly stopped and smiled. She said, "I've just got it! It's not because I'm doing anything wrong, it's what he is doing!"

84. Mr Swan was released from the 10 days in prison to which he was sentenced on Friday, 16 March 2012. The shelter called to ensure that there had been no problems on the weekend after his release. She said there hadn't.
85. On 25 March 2012, Kwementyaye and the children were at a birthday party. Mr Swan was out drinking. He called her. She didn't answer. He arrived home at 8.00am still drunk. He was angry because she hadn't answered her phone. He was jealous and accused her of playing around with other men. His yelling woke the children. He left and told her not to be there when he returned. He added that he would get his mother onto her. She and the children returned to the Women's Shelter for a day.
86. All but ten of the domestic disturbances recorded by Police related to Mr Swan coming home in the early hours of the morning in an intoxicated state and Kwementyaye calling the Police to have him removed.
87. On 5 December 2013, there was another referral made to the shelter relating to the ongoing problems. The referral noted:

“Police have been called to assist this person numerous times over the past few weeks, in relation to alcohol induced domestic incidents. [Kwementyaye] has asked for support as she is not coping as well as she would have hoped in relation to her husband Nathan being intox. [Kwementyaye] states she can't deal with him when he is intoxicated.”
88. She was contacted on 13 December 2013 but said she was fine and didn't need any support.
89. The last DVO between them was made on 19 May 2014 and was for a period of 12 months. She died before it expired.
90. The specific reason for the DVO was said to be that Mr Swan punched Kwementyaye to the face.

91. On 14 September 2014, there was another referral made. The background to it was said to be:

“During the evening McCormack was out drinking with friends and on the way home got a phone call from her partner Swan saying he was outside the house – he was intoxicated. Four children were at home inside the house. When McCormack got home she reports Swan was swearing in front of the kids and was drunk, so she locked him out of the house and called police. He began banging on the windows to get back in, and she feared he was going to break the window.”

92. Police arrived but were unable to locate him. Kwementyaye said that he was aggressive when he drank but fine when he was sober and would likely return home when he was sober.

93. Many attempts at contact were made through phone calls, texts and visiting the house by support services. When contact was eventually established by the Women’s Shelter, Kwementyaye indicated that all was well and the last two weeks had been quiet.

94. Between that point of time and her death there were two further times that Mr Swan was recorded as being violent toward Kwementyaye. Both were in November 2014.

95. On 2 November 2014, Kwementyaye called Police stating that Mr Swan had got into the house and tried to choke her. He was intoxicated and kicked her to the face giving her a fat lip.

96. When Police arrived they found Kwementyaye to be highly emotional and intoxicated. She said she was too upset to talk to Police but would make a report later. She didn’t.

97. A week later Police attended at her residence to follow up. Kwementyaye stated that she did not wish the breach DVO or assault to go to court and refused to assist.

98. The Police then spoke to Mr Swan. He admitted only that there had been an argument and he left.
99. Police then spoke to Kwementyaye and Mr Swan together. They stated that they loved each other very much and had made arrangements to speak to a counsellor. They both stated that they wanted to do the best thing for the family and both agreed to have a break from alcohol. They said they were both employed and they wished to make a genuine attempt at fixing their relationship.
100. On 22 November 2014 at 2.42pm, Kwementyaye once more called Police. She said that Mr Swan had come home intoxicated and had hit her in the mouth with his fist. Police attended. She told them that Mr Swan had attended the residence at about 8.00am in the morning intoxicated. She asked him to leave. He did.
101. But he then returned at about 2.30pm. He was intoxicated. He started questioning Kwementyaye where she had been the night before and then grabbed her lip, pulled it and hit her in the face with his right hand. The assault caused a cut to her right eye, a cut to her lip and swelling to her face. He then left with a relative. The children were said to have been present and observed the assaults.
102. Photos of the injuries were taken and a statement obtained from Kwementyaye. That was only the second time that Kwementyaye had cooperated with Police in having Mr Swan charged for an assault. The first was in 2009 and she had recanted on that occasion.
103. A Victim Impact Statement was completed. She stated:

“I don’t want Nathan to go to gaol, I want him to go to anger management and get some counselling.”

104. A statement was then obtained from the relative who had been present. He confirmed that he had purchased a 30 pack of VB that morning at 10.00am with Mr Swan. They had drunk it and then he had driven Mr Swan to the residence. Mr Swan went inside and he heard a scream. Mr Swan came out and they left.
105. Mr Swan was charged, bailed and the matter adjourned to 5 February 2015.
106. The Department of Children and Families were again notified. When speaking to the caseworker Kwementyaye described her relationship as a “good relationship even though there was lots of domestic violence”. She said she didn’t regard the incident as a serious incident.
107. When Mr Swan was interviewed, he said there was no domestic violence and that his children were well cared for. He agreed things had been escalating recently and put that down to stress from mates and family passing away. He agreed that he had a “quick temper” but said that he had developed the ability to control it by walking away.
108. He said he drank only once a month and then only 8 – 10 cans. He said that he grew up with violence and fighting and didn’t want that for his children.
109. The charges were mentioned before the court on 5 February 2015 and adjourned to 19 March 2015 for a “contest mention”.
110. On 19 March 2015, Kwementyaye attended court with Mr Swan. She approached his lawyer and asked that a statement be taken from her because she wished to drop the charges. She was referred to Ms Laia Dominguez of the Victim Support and Advocacy Service.

111. It was explained to Kwementyaye that there was no need for her to be at court on that day. In response she said that it was not true that Mr Swan had hit her. She said she had not said that to Police and that they were lying. She said that she wanted Mr Swan to get help with his alcohol problems.
112. It was explained to Kwementyaye that she had the option of asking the Magistrate that she not give evidence against her partner due to her fear that he may do something to her. She said she would think about it.

The day before she died

113. On 28 March 2015, Mr Swan went out drinking with friends and relatives. Kwementyaye planned to have a party of her own. She invited her nieces and others around to her residence. She got her mother to take her two children for the night.
114. She and her guests drank into the evening and then Kwementyaye and two friends went to the Casino where she spent most of the time at the poker machines.
115. She left alone in a taxi at 1.05am and returned to her residence. One of her male cousins came by. She made up some food and after eating went to bed. Her cousin slept on the couch.
116. Mr Swan was lurking outside the Casino at some point during the evening. At 2.16am that morning he sent a text to Kwementyaye saying “Where you baby”. There was no reply. At 2.39am he tried to call but the call went unanswered.
117. At 3.45am Mr Swan left the Casino grounds and was driven home. He arrived home at about 4.00am.

118. He found his nephew Joseph asleep on the lounge. He kicked the lounge, woke Joseph and told him to get up and move along. Joseph said “It’s only me your nephew, I’m just having a sleep here, what’s your problem”, Mr Swan said “Don’t talk shit just walk away now”.
119. Joseph got up. He walked down the hallway and said goodbye to Kwementyaye. She was in her bedroom on her bed. The door was open.
120. As he left he saw Mr Swan in the kitchen still “cracking the shits”, slamming chairs while waiting for him to go.

Her Death

121. For the next fifteen or so minutes (until 4.17am) the only information comes from Mr Swan. According to him they had an argument. On sentencing in relation to breaching the DVO (being at the house while intoxicated that night) he told the court through his lawyer that the argument between them was over Joseph being there.
122. At 4.17am he rang “000”. In response to the question from the operator, “Okay Nathan tell me exactly what happened” he said, “I dunno, my wife just fell down. She fell on something sharp and she’s bleeding and she is drunk”. The operator said “Okay I need you to tell me exactly what happened. Did she fall over or did she collapse?” Mr Swan replied, “No she just fell down. I dunno the, yes she fell down”.
123. About two minutes later he mentioned to the operator that there was a lot of blood in the bedroom. The operator asked where the blood was coming from. Mr Swan said: “I dunno, I’m trying to figure out how it is all over her jeans. I think she fell on something sharp”.
124. Mr Swan later gave other explanations however none of them included Kwementyaye falling down and none of them included her falling on something sharp. None of them included Mr Swan trying to figure out

- where the blood was coming from. His final version was that she stabbed herself and he had pulled the knife out.
125. She had clearly fallen to the floor. When she was found by the paramedics she was lying on her back between the doorway and the side of the bed.
 126. The Forensic Pathologist, Dr John Rutherford gave evidence that Kwementyaye had bruises to the back of both hands. The bruises extended from the middle to the ring and little fingers. He said they were “fresh bruises”.
 127. They were in such a position that if her hands were held with the little fingers touching, palms facing inwards (perhaps covering her face) the bruises could have been caused by a single blow.
 128. The Forensic Pathologist also provided evidence after looking at the medical records and scans of Mr Swan. Mr Swan had a broken hand. In his opinion the bone broken is consistent with having been occasioned due to a punch. Dr Rutherford described that presentation as being known as a “boxer’s fracture”.
 129. Mr Swan did not draw attention to his hand until the day after he had been taken into custody. Photographs taken shortly after he was taken into custody do not show much swelling. But by the time he was taken to hospital the photographs show his hand to be quite swollen.
 130. Dr Rutherford found that Kwementyaye had a stab wound 2.3cm wide and 8.5cm deep. The wound tracked horizontally through the “thigh medial to the femur in the sagittal plane and transected the femoral artery”.
 131. Dr Rutherford was of the opinion that due to there being a single stab wound it was less likely that Kwementyaye had inflicted the wound on

- herself. He said that self-stabbings tend to be distinguished by the number of attempts because of an underestimation as to the effort required.
132. When the paramedics arrived at about 4.33am they found Kwementyaye to be unresponsive. She showed no signs of life but was still warm. They commenced resuscitation.
 133. They asked Mr Swan what had happened. But he did not give an explanation. Rather, he became aggressive. A little later he gave the explanation that he and Kwementyaye had been at separate places drinking and then they had an argument and then a feed. He then paused.
 134. He became angry again. The paramedic giving evidence was of the opinion that he paused just after he had said they had an argument as if he had realised he shouldn't have said that.
 135. Sometime later however when the Police arrived he provided a different explanation. For the first time he said that she had "done it to herself".
 136. To Constable Patrick Egan he said that she first threatened to harm herself. Mr Swan did not believe she would do it and was shocked when she did.
 137. To Senior Constable Fredi Pedrotti he said he found her on the bed bleeding lots (forensic examination found no blood on the bed).
 138. To Constable Jason Sariago he said, "I just come back she stabbed herself". "I was out and I came back, we argued ...".
 139. Even taking into account imperfect memories and note taking by the Police, the story from Mr Swan changed dramatically.
 140. The versions are clearly inconsistent. Mr Swan also appeared to be trying to cover the likely scenarios where he was at fault. When speaking to the

“000” operator, he didn’t really know how it happened but it was without his involvement (she just fell on something sharp, she was drunk and he didn’t know from where she was bleeding).

141. To the police officers at the scene he said she stabbed herself. To the police officer arresting him for Breach DVO he said she had rung him and invited him home and then stabbed herself (the evidence from their telephones did not support that version).
142. To the officer taking him to the hospital for his broken hand he said he couldn’t remember but he must have punched something 2-3 days before.
143. Two months later while in prison and giving fingerprints to an officer who had explained he was there to obtain evidence for forensic examination, Mr Swan mentioned for the first time he pulled the knife out of her leg.
144. When offered an interview by Police however he declined to comment or provide his version of events.
145. As the blood flowed Kwementyaye lapsed into unconsciousness. She bled an estimated three litres of blood onto the floor around her and died.
146. Her blood alcohol reading was 0.200%. Dr Rutherford comments that would be a conservative figure as she was given saline during attempted resuscitation.
147. Mr Swan was breath tested by Police at 5.33am. His blood alcohol reading was 0.096%.
148. Throughout the inquest I heard not one scintilla of reliable evidence to suggest that Kwementyaye might have stabbed herself.

149. The events of that evening followed a scenario recorded on previous occasions. After Kwementyaye had been out “on the town”, Mr Swan got jealous, they argued and he became violent.
150. A summons was sought to be served upon Mr Swan to ensure his attendance at the inquest. However he evaded personal service and stayed in Western Australia. According to his sister, he stayed there on legal advice.
151. Police have not charged any person in relation to her death.

COMMENT

152. Section 34(2) *Coroners Act* provides:

“A coroner may comment on a matter, including public health or safety or the administration of justice, connected with the death or disaster being investigated.”

153. The circumstances of the deaths of Kwementyaye McCormack and Kwementyaye Murphy raise a similar primary issue: why in the decade leading to both of these women’s deaths was the criminal justice system unable to stop the violence and their eventual deaths?

Unwillingness to utilise the criminal justice system

154. The most obvious reason was that neither of the women wished to cooperate with Police.
155. They were both willing to use Police to defuse situations and to assist with obtaining DVOs. However they were generally unwilling to cooperate with Police in having their husband charged and potentially incarcerated.

156. In the case of Kwementyaye McCormack there were two exceptions to that. The first was in relation to an alleged assault on 20 December 2008 and second in relation to an alleged assault on 22 November 2014. But on each occasion she sought to withdraw her cooperation.
157. There were obviously reasons why these women did not wish to cooperate. They clearly wanted the violence to stop. But they did not consider the criminal justice system as being an appropriate means by which to achieve that.
158. I heard evidence from Laia Dominguez of the Victims Support and Advocacy Service in Alice Springs. She works with victims of domestic violence in Alice Springs and spoke to Kwementyaye McCormack on 19 March 2015 about her options.
159. She indicated that women in that position get the blame from family and the Aboriginal community for what happens to their partners, particularly if they go to prison. She said that it was a big step for an Aboriginal woman to seek that her husband be removed from the community and put in prison. There is recognition that too many of their men are already in prison.
160. It is commonly thought by those in the criminal justice system that sending the violent men to prison, if nothing else, will at least provide to the victims a period of respite. However that may not be the case.
161. I was told that for many victims there is pressure from the husband's family for the victim to withdraw the complaint. The paternal mother-in-law, who possesses considerable power, may well take the victim's children. The victim's own family may seek to dissuade her.
162. If the offender is imprisoned that may not provide the anticipated relief. The husband's family will keep an eye on the victim to ensure she does

not see other men and will provide the imprisoned husband with information on what the victim may be doing. They might even take the victim to live with them.

163. When released, the husband may pursue retribution against the victim for her role in his imprisonment and her real or imagined misdeeds while he was incarcerated.
164. Ms Dominguez said that the imminent release of offenders is often the time women seek out the Women's Refuge.
165. Those consequences are obviously not intended by the criminal justice system. But those factors may well give an explanation as to why these women were so reticent to cooperate with the system.

Police Response

166. In 2005 in the Inquest relating to the death of *Anne Chantell Millar* I recommended that Police utilise the law to hold perpetrators of domestic violence to account. The history of Police intervention in each of these cases indicates that Police did become more and more proactive after 2005.
167. Despite neither woman wishing to cooperate, on most occasions Police ensured DVOs were in place and whenever possible charged the breach of the order and the aggravated assault.
168. However the proactive efforts of Police were not able to protect or save these women.
169. Even without Kwementyaye Murphy's cooperation Police were able to put together evidence that kept Mr Scrutton in prison for over half of the last 10 years of her life. But that did not stop the beatings. Nor did the DVOs.

170. He was often arrested and sent to prison. He was in custody for more time than he was at liberty and yet the pattern of his violence when at liberty seemed unaffected. Indeed, it increased.
171. It is all too easy to think that if the women had cooperated with the Police that the system might have been more effective. But it omits consideration of the likely consequences to the victim.
172. Those consequences were such that the women would not or could not cooperate with the criminal justice system.

The Town Camp

173. Kwementyaye Murphy lived in Hoppy's Camp, a Town Camp in Alice Springs. The Town Camps are Aboriginal Communities and zones of significant socio-economic disadvantage.
174. The law does not permit the consumption of alcohol in the Town Camps. If found, Police tip it out on the ground. However it is evident that consumption of alcohol in or near the Town Camps is a regular occurrence.
175. Law and order is not likely to be seen in a positive light in the Town Camps. The "law" tips out the alcohol, it removes children from families and takes members of the community (usually men) to prison.
176. Similar to many of the low socio-economic areas throughout the world, the concentration of disadvantage is accompanied by significant gender inequality and violence.
177. On the other hand, Kwementyaye McCormack lived in the Alice Springs suburb of Larapinta but not in the Larapinta Valley Town Camp. She and her husband were employed.

178. However, the violence in her life and in the lives of her family was also very real.
179. On the day before she died her niece came to Kwementyaye's house after an altercation with her husband. She had driven home and met her husband who broke the windscreen of the car (while she was still in it) and was about to stab her son (who was in the car) when her mother intervened. Kwementyaye called the Police.
180. Her niece continued to fear that her husband would find her. She was unwilling to stay at Kwementyaye's house by herself. She said that her husband got that way every month when they came into Alice Springs for supplies. He would get drunk and violent.
181. One of Mr Swan's cousins was with him prior to Mr Swan being dropped home on the morning of Kwementyaye's death. He gave evidence at the inquest that he had been in prison five times for domestic violence. He was in prison at the time he gave his evidence.
182. He was not willing to abide the terms of the DVO because he wanted to see his daughter. He was unrepentant.
183. One of the more impressive witnesses during the inquest was Justine Castine-Swan, the sister of Mr Swan. She clearly didn't want to be giving evidence and was only there because she was summonsed. Ms Castine-Swan had been the primary carer for Kwementyaye's children since her death. She was well respected by both families.
184. She stated that domestic violence in Alice Springs is out of control. She said they get drunk and violent. It happened in her extended family. She

explained it as a “cycle” and said “it gets normal”. She described the alcohol problem in Alice Springs as being “pretty bad”.¹

185. Of solutions, she said:

“I think there has got to be a bit more education ... I’ve seen a lot of domestic violence and the families pressure the victims as well, like, the families of the offender can pressure the victim to stay, or you know, blame them with stuff, to stay with that person or ‘you put him in gaol’ and all that. There needs to be some of these strong women in Alice Springs, indigenous women need to stand up and say ‘no’. If this lady wants to get out, the other family shouldn’t be pressuring them. They should support them and say, ‘you know if you want to leave him, leave him. Don’t put all this blame and try to make them stay and all that. I think a lot of the time, the women do stay because they’re scared.

When there’s these domestic violence cases, they need to stop adjourning it all the time. Adjourning it from one week to the next all the time. It needs to be dealt with ASAP, because it keeps just lingering on and on and on.”²

The Correctional System

186. Incarceration did not seem to have the effect hoped for by the justice system. It seemed not to provide deterrence.

187. The “public denunciation” attendant on a sentence of imprisonment seemed of no effect. There seemed no shame in going to prison.

188. If the objectives of law and order are to protect the victims and punish, denounce and deter the offenders, those objectives were not met.

Rates of Domestic Violence

189. The rates of domestic violence generally in society are substantial.

¹ Transcript p65

² Transcript pp 66, 67

190. However the rates of domestic violence in the Aboriginal community are far greater. Acting Assistant Commissioner Vanderlaan provided evidence that sixty percent of assaults in the Northern Territory are associated with domestic violence. Seventy-two percent are on Aboriginal women.
191. Fifty-six percent of the homicides in the Northern Territory are a result of domestic violence.
192. Further variables have been analysed by Jeanette Kerr.
193. Ms Kerr was summonsed and gave evidence in the inquest. She is an Assistant Commissioner of Police in the Northern Territory. She was not however summonsed due to her position with Police and she did not give her evidence in that capacity, but rather in her own right.
194. In January 2016 she completed a Masters Degree through Wolfson College, Cambridge University in Applied Criminology and Police Management.
195. In doing so she completed a thesis titled: *“A descriptive analysis of the characteristics, seriousness and frequency of Aboriginal intimate partner violence in the Northern Territory, Australia: a strategy for preventing high-harm cases or serious harm cases”*.
196. Her research was clearly extensive. The thesis states that it is the first descriptive analysis of “the characteristics, frequency and severity of Intimate Partner Violence reported to the NT Police and establishes a sound evidence-base for the articulation of government and police policy, strategy development and resource deployment.”
197. I note in passing that on 13 September 2016 Ms Kerr was awarded the 2016 *Excellence in Research on Improving Law Enforcement for Women* for the study contained in her thesis.

198. I do not wish to “steal her thunder” and her thesis is too extensive for the purposes of this inquest, but I intend to adopt at least two of her recommendations.
199. Police indicated that they were reviewing the thesis. They provided a statement to my Office:
- “The study has been presented to the Northern Territory Police Senior Executive Group. It is currently being considered and areas of expansion have been identified, including obtaining qualitative information from the community, to better inform ongoing policing strategies. The paper will be utilised in the context of future Domestic Violence Strategy.”
200. In her thesis Ms Kerr noted the pervasive presence of intimate partner violence (IPV):
- “The prevalence of IPV within the NT Aboriginal community revealed in these data is a most significant concern, with nine out of ten victims being Aboriginal, and eight of them Aboriginal women. Given that Aboriginal women are about 10% of the population this means that almost three quarters of them have been the victim of intimate partner violence, recorded in police reports, over a five year period. It is not an exaggeration to say that intimate partner violence committed upon Aboriginal women in the NT is pervasive. In fact the prevalence rates among this population are among the highest in the world. There is clear evidence that nearly all the offenders in the case of these women are Aboriginal men.”
201. When no weapons were used women suffered 98% of the harm.
202. When weapons (other than edged weapons) were used almost all of the crime harm was experienced by women. It was different however, when edged weapons were used. Men suffered 44% of the harm in such cases. Ms Kerr stated that it was often believed that women in such situations caused the harm in self-defence or retaliation.
203. That belief was tested by analysis of all male victims in 2014. Ms Kerr found that two-thirds of Aboriginal male victims had previously been the

offender. In 77% of the cases more than once and in 6% more than 10 times.³

204. Across the Northern Territory there is on average 252 incidents of intimate partner violence per 1000 of population.
205. In Tennant Creek it is 1269 incidents per 1000. In Katherine it is 628 per 1000 and in Alice Springs 450 per 1000.
206. The interesting aspect that Ms Kerr found was that the ratio of crime harm was rather different. Tennant Creek had 7.5% of total incidents but 6.2% of the harm. Katherine had 11.4% of the incidents and 9.8% of the harm. Alice Springs on the other hand had 22.7% of the incidents and 33.4% of the harm.⁴
207. The only other area with such high harm was the remote south of the Territory. That area experienced 6.6% of the incidents and 8.9% of the harm. By contrast the remote north had 16.7% of the incidents and 11.5% of the harm.
208. Ms Kerr also found that harm more than doubled when alcohol was involved in Alice Springs, as it did in Tennant Creek and Darwin. Elsewhere however, the same relationship was not as evident.⁵
209. Those statistics are reflected in the experience of my Office. There have been 17 deaths related to domestic violence in the last four years alone. Seven of those were in the Alice Springs area. The brutality is not always reflected in the simple numbers. Set out below are the short facts of three such deaths by way of illustration.

³ J Kerr p74

⁴ J Kerr p76

⁵ J Kerr p81

Kwementyaye Nelson

210. On 28 December 2012 Kwementyaye Nelson died due to injuries received in an assault upon her by her partner at Abbotts Camp, Alice Springs. She was 22 years of age. The circumstances were as follows:

In February 2012 a DVO was taken out against her partner Sebastian to protect her. One of its conditions was that he was not to approach her whilst intoxicated.

On 24 December 2012 the deceased was with her partner at Abbott's Camp. They were consuming alcohol throughout the day. Later that night there was a party at House 4 with about fifty people dancing in and around the house.

Sebastian saw the deceased dancing in the house near another male. He became jealous. He punched the male and then punched the deceased and pulled her to the ground.

Sebastian then dragged her out into the yard, picked up a piece of concrete in both hands and hit the deceased on the head. He then hit her about the head with a stick and walked away leaving the deceased bleeding profusely. She stopped breathing and was taken to Hospital. She had massive intracranial haemorrhage and died 4 days later.

On 11 April 2014 Sebastian Kunoth-Kelly was sentenced to 9 years and 6 months for manslaughter of the deceased with a minimum term of 7 years.

Kwementyaye Coulthard

211. On 19 February 2013 Kwementyaye Coulthard was killed. She was just 24 years of age. The circumstances:

At 7.30 pm on Tuesday 19 February 2013 the deceased and her partner, Everett Wheeler purchased food and a carton of VB from the IGA store located on Flynn Drive, Alice Springs. They walked toward Larapinta Valley Camp.

They entered bushland adjoining the Camp and began eating and consuming the beer.

At some point they started to argue. Everett Wheeler picked up two sticks and struck the deceased in the head, face, arms, chest and legs.

He picked up a star picket and hit the deceased. While doing so he fell over and when getting up he took hold of a rock the size of a rockmelon and hit the deceased about the head with it about twelve times. Eight of those times left wounds that penetrated to the bone.

At the scene there was blood on the sticks, the star picket and the rock. There were 24 distinct areas of bruising on the deceased's body.

The deceased died of a subdural haematoma.

When the deceased appeared dead, Mr Wheeler was filled with remorse. He carried and then tried to drag the deceased back to the Community. The next morning he handed himself in to Police.

He pleaded guilty to manslaughter and was sentenced on 7 July 2014 to 10 years 6 months imprisonment with a non-parole period of 7 years.

Kwementyaye Driver

212. On 23 April 2014 Kwementyaye Driver was killed near the Wauchope Hotel (between Tennant Creek and Alice Springs). She was 23 years of age:

On 23 April 2014 she joined a group drinking in the scrub near Wauchope Hotel. Amongst them was Simos Riley. Both the deceased and Simos were intoxicated. They argued over jealousy issues.

Simos then began to punch the deceased. She was knocked to the ground. Simos then kicked the deceased to the head a number of times and then picked up a branch and hit her. He then turned to others nearby and said "You want to fight me?" They turned their backs and left and heard further thumps as if he was continuing to hit her.

Simos then dragged the body of the deceased to another location where he sought to burn it.

At autopsy she was found to have died of multiple injuries that included subarachnoid haemorrhage.

Simos Riley pleaded guilty in the NT Supreme Court to reckless manslaughter of the deceased. He was sentenced on 6 August 2015 to 11 years and 6 months imprisonment, with a non-parole period of 8 years.

Frustration of the Courts

213. The frustrations with the continuing and extreme levels of violence are being voiced by Judges.

214. On 14 September 2015, Justice Kelly took the unusual step of allowing media with cameras into the Supreme Court during the sentencing of Conway Stevenson. He had killed his partner, Kwementyaye Bigfoot on 26 November 2013 at Bagot Community in Darwin. She was 29 years of age. The circumstances of her death were as follows:

“There was a significant history of domestic violence between the deceased and Mr Stevenson:

- On 7 October 2010 Mr Stevenson assaulted the deceased with an iron bar, breaking her arm. He was convicted for assault and a DVO was made for two years.
- On 5 September 2011 the deceased struck Mr Stevenson on the head with a stick resulting in a minor laceration.
- On 20 November 2011 the deceased and Mr Stevenson were arguing and Police noticed a laceration on the deceased’s arm. However she refused to provide any information to Police about how she was injured.
- On 7 March 2012, Mr Stevenson punched the deceased until she fell to the ground and then tried to stomp on her head. He was convicted of aggravated assault and contravening the DVO.
- On 2 July 2012 the deceased smashed a bottle and stabbed Mr Stevenson with the broken bottle three or four times. Mr Stevenson was taken to the Royal Darwin Hospital and a DVO was taken out in his favour.

- On 11 March 2013 Mr Stevenson picked up a metal bar and chased the deceased. At the time her foot was in a cast from a previous assault that until that time had been unreported. Mr Stevenson hit her four times on the head, shoulder and upper body with the metal bar. She had lacerations to the back of her head and her left eyebrow. Again Mr Stevenson was convicted and a DVO was taken out in the deceased's favour for two years.
- On 30 September 2013 the deceased picked up a milk crate and hit Mr Stevenson three times on the head. He lost consciousness and was taken to RDH. The deceased was charged but the matter had not been finalised at the time of her death.

On 26 November 2013, the deceased and Mr Stevenson were drinking. Prior to 9.00pm the deceased and Mr Stevenson were heard swearing at each other and then there were sounds heard as if the deceased was being beaten by Mr Stevenson.

He was saying, *"I'll kill you dead", "you have no one to help you", "you want to get cheeky, fight me back, get up get up come have a go with me"*.

At about 9.45pm Mr Stevenson was seen dragging the deceased by the arm and then stomping on her stomach. Many people in the Community heard the deceased calling out and screaming but no one went to her assistance and no one called the Police.

One of the reasons given for why they did not intervene or call the Police was because the deceased and Mr Stevenson were always fighting. In fact many recalled that due to the frequent fighting the deceased was always "busted up".

She was found dead the next morning.

Mr Stevenson told Police that he punched her "real hard" in the face six to eight times, kicked her in the face and hit her with a stick. He said she was "bleeding like full mad" and screaming for help. He jumped on her face four times and punched her in the stomach very hard.

He said he did so because he wanted her to go home with him and she wanted to stay out drinking. That made him angry.

An autopsy was performed and she was found to have died of internal injuries. She had 0.152 % alcohol in her blood. The next morning when Mr Stevenson was arrested he still had 0.166 % alcohol in his blood.

He was sentenced to 14 years in prison and eligible for parole after 8 years.”

215. The media were invited into the Court to highlight the issue of domestic violence. Also highlighted was the failure of others to intervene. Justice Kelly said,

“what are we, what have we become if we do not try to help each other when terrible things like this are happening”.

216. On 15 June 2016 in Alice Springs Supreme Court, Edgar Inkamala was sentenced for aggravated assault and unlawfully causing serious harm on his partner. Justice Martin noting that previous sentences had no effect at all on his behaviour, said:

“Women in domestic situations are susceptible to this type of violence, particularly within Aboriginal communities. The victim of your offences and female victims generally and particularly in Aboriginal communities are entitled to such protection as the law can give them.

This Court has repeatedly said that this type of violence will not be tolerated and will be met with significant terms of imprisonment. General deterrence, that is deterring others who are minded to behave like you, is of particular importance.

Judges like me are left disturbed and perplexed by this type of alcohol fuelled violence committed in the domestic setting and we are left with no option but to impose sentences that hopefully will both deter the offender and others.

It must be said that increasing sentences have not had the desired effect and there is a need, an urgent and desperate need, for remedial action in other areas because the Court is at the tail end of the problem and increasing sentences is not the answer.”

217. On 22 June 2016 when sentencing Edwin Armstrong in the Alice Springs Supreme Court in relation to unlawfully causing serious harm and other offences related to violence against his partner, Justice Martin said:

“You have taken no notice of numerous sentences of imprisonment and you have taken no notice whatsoever of restraining orders over many years ...

General deterrence is important notwithstanding the fact that over the years the penalties have increased and they do not seem to be having any significant impact as a deterrent. As has been said so often, this is probably because drunken men like you, when they are highly intoxicated and become angry and violent, do not think about the consequences.”

218. On 29 July 2016, Justice Southwood sentenced Dale John Smith to 11 years imprisonment with a non-parole period of 8 years. Mr Smith is not of Aboriginal heritage. His violence and abuse had kept his whole family in fear for more than 20 years. Justice Southwood stated:

“This case affords the Court an opportunity to educate the community about the very serious nature of domestic violence; to make it clear that domestic violence is a serious violent crime ... The victims are entitled to be safe and secure in their community. They are entitled to lead lives free from violence, degradation and humiliation. The Court must do what it can to protect them ... They have done nothing wrong.

I am recommending to the Parole Board that you should not be released on parole until you fully acknowledge the criminality of your past conduct and until you have completed both the Intensive Alcohol and Other Drugs Program and the Violent Offender Treatment Program.”

Rates of Domestic Violence

219. Police presented evidence at the inquest that the rates of domestic violence were the lowest since 2012 (decreasing 0.5%). Also provided

was a graph showing that the rates are once more on the rise. Of the reasons for the slowing of reported cases it was said:

“Certainly our efforts with our domestic violence strategy, the Family Safety Framework, alcohol protection orders and I think it’s a combination of a lot of new strategies and reinforcement of older strategies. But I guess one of the main telling factors is the reduction of the supply of alcohol, particularly in Alice Springs, Katherine and Tennant Creek.⁶”

220. Lest any comfort be gained from the last four years, Acting Assistant Commissioner Vanderlaan stated:

“What is also evident is that indigenous males and females become victims and/or perpetrators of domestic violence at a young age. Presently in the NT 38% of the indigenous population is less than 15 years of age. It is therefore clear that the issue of DV is likely to impact negatively on these young people and the future rates of DV in the NT.”

221. In the non-Aboriginal population, 19% are under 15 years of age.

222. Police provided the following graph from the last financial year showing that the critical ages of offending are from about 15 to 50 years:

Age Range of Offenders

| Age Range | Offenders | Percent |
|------------------|------------------|----------------|
| 8-14 Years | 33 | 0.41% |
| 15-19 Years | 628 | 7.93% |
| 20-24 Years | 1223 | 15.45% |
| 25-29 Years | 1601 | 20.22% |
| 30-34 Years | 1421 | 17.95% |
| 35-39 Years | 1062 | 13.41% |
| 40-44 Years | 909 | 11.48% |
| 45-49 Years | 614 | 7.75% |
| 50-54 Years | 261 | 3.29% |
| 55-59 Years | 101 | 1.27% |
| 60-64 Years | 40 | 0.50% |

⁶ Transcript p152

| | | |
|--------------------|-------------|---------------|
| 65-69 Years | 19 | 0.24% |
| 70-74 Years | 2 | 0.02% |
| Grand Total | 7914 | 99.92% |

223. Of particular concern also are the offenders between 8 and 14 years of age.

224. The rates of domestic violence are very high and it would seem likely to get worse. There is little evidence that law and order have been able, or are likely to be able, to make significant inroads to reduce the high prevalence of the violence.

225. There was no evidence provided that would indicate what effect the many other programs and initiatives outside of the Police Force are having. They are obviously very important in trying to change what is a very difficult problem. But the fact that the rates of domestic violence are so high indicates that there is much to be done.

Effectiveness of DVOs

226. There is a cohort that does not appear to give DVOs much heed. The husbands of the women, the subject of this inquest, fit that cohort.

227. A statistic was provided by Police that 60% of all assaults are committed despite the presence of DVOs. Ms Kerr indicated that 94% of all court orders breached are DVOs.

228. An understanding of the vicious nature of the assaults by some men and the many years over which their partners endure violence is unfortunately not new.

229. The Inquest into the death of *Jodie Palipuminni* in 2006 was one in which the facts were somewhat similar. The deceased had been assaulted and abused for over a decade. The violent male was sent to prison on the

last occasion for pouring boiling water over her, burning 20% of her body and breaking her arm with a steel bar. He was released on probation after 18 months with a condition not to contact the deceased. He breached that condition. They resumed their relationship and he killed her.

230. In that case I stated:

“[T]here is much to appreciate and respect in the way Aboriginal people live their lives in remote communities in the Northern Territory. However, the present day gross violence perpetrated on some women in such communities by some men must be recognised and something done about it. The criminal courts of the Northern Territory are replete with examples of shocking violence inflicted upon Aboriginal women in remote communities.”

231. That was ten years ago. The Police are now far more proactive, many Domestic Violence initiatives are now available for victims and perpetrators and we are now into the third quarter of *The National Plan to Reduce Violence against Women and their Children 2010 – 2022*. However, any positive impact on domestic violence in the Aboriginal community is difficult to detect.

232. It is time to take stock. To re-evaluate the strategies dealing with domestic violence in Aboriginal communities.

233. There are improvements that can be made to the criminal justice system and they should be made. But there is a need for something that is more appealing and able to be more readily utilised by victims.

Improvements to the current system

234. There are two obvious areas where improvements could be made to the criminal justice system. They are interrelated:

- the use of body worn cameras by Police Officers and using the information recorded as evidence-in-chief in prosecutions; and

- speeding up the processes of the Court when dealing with domestic violence.

Body Worn Cameras and the Evidence-in-Chief Initiative

235. Police gave evidence that they are working on the introduction of body worn cameras and possible legislation (along the lines of that recently introduced into NSW and the ACT) to allow the use of evidence gathered to be tendered in court as evidence-in-chief.
236. As has been apparent, the victim is sometimes willing to assist Police in the immediate aftermath of an assault. But as the months pass, things change. The circle of violence moves into the phases of the victim feeling guilty and then on to the good times again. The victim may also be dissuaded by the family and community from continuing to assist the system.

Speeding up Court Processes

237. As a Local Court Judge on circuit to the remote communities I often find that the court processes in remote courts are more effective because of the speed with which matters are dealt. I am often hearing cases when the victim still carries the bruises. The perpetrator standing in court and the community at large can see the physical damage he inflicted on the woman he says he loves.
238. There should be more effort made in the processes of courts to ensure that domestic violence matters are given priority. That suggestion also came from Ms Castine-Swan.

Plan B

239. However, making the systems of the state more effective did not work for these women and improvements as noted above may well not have provided to them the protection they sought.

240. Denouncement in sentencing is generally seen as a very strong part of deterrence. It is evident in these cases that imprisonment in some Aboriginal communities does not lead to shame.

241. Indeed, there is significant evidence elsewhere suggesting that imprisonment may be seen as a ‘rite of passage’.

242. Another of the issues noted by Ms Kerr was that DVOs were often engineered to keep people apart. Ms Kerr stated:

“[M]ost DVO breaches by Aboriginal men and women are against current partners. This would seem to indicate that Aboriginal [partners] are less likely to separate as a result of intimate partner violence than non-Aboriginal [partners], or at least less likely to comply with conditions of DVOs than Non-Aboriginal offenders. The previous point is worthy of merit given that many NT Aboriginal people live in remote communities and have strong kinship and cultural ties. Given that Aboriginal [partners] tend to remain a couple and live in small communities, dealing with intimate partner violence as ‘victim’ and ‘offender’ using arrest and DVOs as the primary means of intervention seems unlikely to be effective as a primary strategy”

243. That is amplified by the fact that couples often drink together. As Ms Dominguez explained, drinking for many is not for social enjoyment. It is a need and in such cases orders are unlikely to be effective.

244. One of Ms Kerr’s suggestions is that consideration be given to alternative intervention strategies to allow for a more flexible family and community focussed approach “that will both ensure the victim’s safety and give the couple the choice to remain together or not”.

245. A number of models were suggested such as the group decision making model (described by Pennell and Burford). The ‘Sentencing Circles’ (described by LaPrairie) and the restorative justice conferences based on the theory of re-integrative shaming (described by Braithwaite).

246. Ms Kerr points out that all of the models seek that family and community have mutual responsibility for preventing violence. The first two models were said to have had good outcomes in parts of Canada.
247. Such models are far more aligned with the community and kinship structures of more traditional Aboriginal communities. To some extent they rely upon shaming of the offender from within the community.
248. The family ties of the communities make it more likely that perpetrators would feel the effect of personal and community disapproval. That is something they currently do not feel. If anything there appears to be support for them.
249. This inquest has made very clear that the current systems are not effective for some Aboriginal women.
250. In such cases, there is no means of protecting the victims and effectively sanctioning their violent partners. A more community based model may provide an option that would also not lead to the victimisation to which these women might be subjected using the current system.
251. Such models need to be appropriately considered and any trials properly resourced.
252. Strengthening of Aboriginal Communities would seem a necessary starting point and the alternate models would be likely to assist in that endeavour.
253. It may provide a Plan B.

Education

254. Due to the large demographic of youth, programs also need to start there. Ms Kerr noted that consideration should be given to the development and implementation of education programs encompassing schools, social

media and the wider media allowing for the young people to learn and discuss respectful relationships.⁷

255. I am aware that there are already many programs along these lines. However, in light of the very high population of Aboriginal youth this would seem to be an area for careful evaluation and considerable action.

Law enforcement Response

256. I heard evidence that recidivist offenders had been identified and the highest level of offenders, (296 offenders who have committed five or more DV related offences in the last 12 months) are going to be targeted with more Police resources. That does seem a sensible initiative.
257. Police also indicated that they were hoping for offender reporting to target and monitor recidivist domestic violence offenders. Ms Kerr also made that recommendation. Given the significant damage that such offenders are doing to partners, children and the community that appears appropriate. For that there will need to be a change in legislation.

Alcohol

258. The supply of alcohol (particularly takeaway alcohol) in the Northern Territory is well known to be problematic and one of the contributors to the horrendous levels of violence. Those issues have not, in any real sense, been confronted over the decades. They need to be.
259. I have previously made recommendations about that. The most recent was in 2015 in the inquest into the death of *Perry Langdon*. I recommended:

“That the Government commission an independent expert inquiry into responses to alcohol misuse in the Northern Territory. This should form the basis for a plan to be developed by government working with stakeholders, including Aboriginal people, communities and organisations, to find solutions.”

⁷ J Kerr p93

Not Suitable for Purpose – The Criminal Justice System

260. The circumstances of these two deaths (and many others known to me) reveal the stark reality that the criminal justice system fails to protect women from domestic violence. That is to say, policing and punitive sentences do not provide an answer to stopping the violence.
261. No doubt, the criminal justice system has some part to play, however its impact comes at the end of the spectrum.
262. It does not deal with the important questions of WHY it happens and WHY it is getting worse. Surely addressing these questions is fundamental to finding the means to protect women.
263. In my view and having regard to my own personal experience, some of the answers are likely to be found in the significant socio-economic disadvantage experienced by Aboriginal communities in the Northern Territory. All of those factors that go to make up that disadvantage are in the context of what is becoming a cycle of generational family violence.

Report

264. The Police investigation into the death of Kwementyaye Murphy was of a high standard, the investigation into the death of Kwementyaye McCormack was not. I will refer it back to Police.
265. I believe that offences may have been committed in connection with the death of Natalie McCormack and in accordance with section 35(3) I report my belief to the Commissioner of Police and the Director of Public Prosecutions.

Recommendations

266. I **recommend** that Police continue to pursue the use of body worn cameras and a change to the legislation so as to allow those matters captured on camera to be used as evidence-in-chief.
267. I **recommend** that consideration by the NT Government be given to introducing offender reporting legislation to allow NT Police to target and monitor recidivist offenders who continue to commit domestic violence at high rates.
268. I **recommend** there be more effort made in the processes of courts to ensure that domestic violence matters are dealt with in a faster process so that hearings have priority in listing.
269. I **recommend** that consideration be given by the NT Government to alternative (to the criminal justice system) intervention strategies that allow for a more flexible family and community focussed approach that will both ensure the victim's safety and give the couple the choice to remain together or to separate (and support them in their choices).

Formal Findings

270. Pursuant to section 34 of the Coroners Act ("the Act"), I am required , if possible, to make the following findings:

“(1) A coroner investigating –

(a) a death shall, if possible, find –

(i) the identity of the deceased person;

(ii) the time and place of death;

(iii) the cause of death;

(iv) the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act*;"

Formal Findings into the death of Kwementyaye Murphy

271. Pursuant to section 34 of the *Coroner's Act*, I find as follows:

- (i) The identity of the deceased is Wendy Murphy born on 5 August 1978, in Alice Springs, Northern Territory, Australia.
- (ii) The time of death was between midnight on 19 December 2014 and 7.58am on 20 December 2014. The place of death was the shed behind House 19 Hoppy's Camp, Alice Springs in the Northern Territory.
- (iii) The cause of death was blunt head and chest trauma.
- (iv) The particulars required to register the death are:
 - 1. The deceased is Wendy Murphy.
 - 2. The deceased is of Aboriginal descent.
 - 3. The deceased was unemployed at the time of her death.
 - 4. The death was reported to the coroner by Police.
 - 5. The cause of death was confirmed by Forensic Pathologist, Dr John Rutherford.
 - 6. The deceased's mother was Doreen Murphy and her father was thought to be Kerry Hammond.

Formal findings into the death of Kwementyaye McCormack

272. Pursuant to section 34 of the *Coroner's Act*, I find as follows:

- (i) The identity of the deceased is Natalie McCormack born on 9 October 1983, in Alice Springs, Northern Territory, Australia.

- (ii) The time of death was 4.33am on 29 March 2015. The place of death was 33 Bokhara Street, Alice Springs in the Northern Territory.
- (iii) The cause of death was from haemorrhage following a stab wound to the front of the right thigh.
- (iv) The particulars required to register the death are:
 - 1. The deceased is Natalie McCormack.
 - 2. The deceased is of Aboriginal descent.
 - 3. The deceased was employed as a youth worker at Tangentyere Safe House at the time of her death.
 - 4. The death was reported to the coroner by Police.
 - 5. The cause of death was confirmed by Forensic Pathologist, Dr John Rutherford.
 - 6. The deceased's mother was Margaret Pearce and her father was Peter McCormack.

Dated this 21st day of September 2016.

JUDGE GREG CAVANAGH
TERRITORY CORONER